

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

December 17, 2013 at 3:00 p.m.

1. [13-22901](#)-E-13 VICTOR/SANDRA GARCIA MOTION TO CONFIRM PLAN
PGM-4 Peter Macaluso 10-30-13 [84]

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 30, 2013. By the court's calculation, 48 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. The Chapter 13 Trustee objects to the plan on the basis that the Debtors cannot make the proposed plan payments.

This is the second in a series of plans to which the Trustee has opposed confirmation. The first plan, proposed \$500 for 60 months with no less than 0% to unsecured claims, to which the Trustee objected to confirmation. The second plan called for payments of \$2,700.00 total followed by \$500 for 55 additional months, with no less than 0% to unsecured, to which the Trustee objected to confirmation. The current plan calls for payments of \$3,700 total followed by \$430 x 11 months, then \$1100 x 42 months, with at least 28% to unsecured. The paystubs for both Debtors are provided support this objection.

Trustee states that Debtor, Victor Garcia, works for UC Davis, his gross income averages \$4,520.66 per month with net income averaging \$1,448.66. This is after average deductions of \$1,132.66 tax withholding, \$207.24 retirement contribution, \$1,565.19 domestic support obligation and

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\$166.91 "other deductions." The net income is \$1,748.50 less than reported on Schedule I. Debtor, Sandra Garcia, works for State of California, her gross income averages \$5,050.00 per month with net income averaging \$3,224.38. This is after deductions of \$1,175.24 tax withholding, \$362.96 retirement, \$73.87 union dues, and \$213.55 health insurance. Trustee states Mrs. Garcia's net income is \$202.15 higher than reported on Schedule I.

Debtors' combined net disposable income is \$4,673.04 (\$1,448.66 + \$3,224.38), which is \$1,546.35 less than the amount reported on Schedule I. On Schedule J Debtors report \$5,789.39 in household living expenses. After household living expenses, the Debtors' budget is negative (\$1,116.35.) Trustee argues that Debtors do not have sufficient net income to support their household and make their proposed plan payment of \$430 per month.

The Trustee also opposes confirmation on the basis that Debtors are not proposing all disposable income in the plan. Form 22C shows Debtor is above median, and has a \$200.75 disposable income, but does not account for the domestic support obligation listed at \$900.00 ending in 11 months. Debtors report on Schedule I, that the domestic support obligation totals \$900 per month and indicate in their plan and motion that the support ends in 11 months. The Trustee's review of paystubs shows that the support is actually averaging \$1,565.19 per month. Debtors propose to increase their plan in 11 months by only \$670 when the support ends. Trustee argues the plan should increase by \$1,565.19 in 11 months.

DEBTORS' RESPONSE

Debtors respond, stating they can afford the payments proposed and have offered to increase the payments as appropriate. However, the Declaration provided by Debtor does not appear to propose an increase in payment. Further, the Debtors do not address how they "forgot" to provide for the decrease in the support payment. At best, they may be asserting that hypothetically the ex-spouse could possibly seek to increase support payments for the then remaining minor child. Therefore, the Debtors appear to contend that the court should ignore the known legal situation and let them keep the money.

This does not evidence good faith by the Debtors. The judicial process is not one in which financial information is misstated or key information omitted, unless and until the Debtors are "caught in the lie." This plan is not proposed in good faith.

Based on the lack of evidence from the Debtor, the Debtor does not appear able to make the proposed plan payment and Debtor appear not to be proposing all of the disposable income into the plan.

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.

expense for cable television, no expense for internet service, \$2 for home maintenance, \$375 for food, no expense for any additional personal care, \$15 for clothing, \$35 for dry cleaning, no expense for laundry/dry cleaning, and recreation of \$6. Trustee states Debtor does not have any flexibility in her budget to allow for the difference in income reported on Schedule I.

The Trustee also states that the plan may not be the Debtor's best effort, as Debtor is below median income and proposes a 60 month plan paying \$1,280 per month with a dividend of no less than 0% to general unsecured claims.

Additionally, the Trustee states Debtor received \$3,755 from the IRS as a tax refund for 2012 and \$1,036 from FTB as a tax refund for 2012. Combined these figures total \$4,791 which averages \$399.25 if spread out over 12 months. Trustee states Debtor also received tax refunds for 2011. She received \$567 from Franchise Tax Board and \$4,817 from the IRS. It appears that tax returns are a historical pattern and can be relied on as a source of income to support the plan.

Lastly, the Trustee states at the 341 meeting, Debtor admitted that her mother lives in the residence and receives social security income. Trustee states it was implied that mother is available and willing to assist the Debtor with household expenses and that is why there is no expense reported for certain utilities and household expenses.

Based on a review of the Debtor's plan and schedules, it does not appear she will be able to make payments required under 11 U.S.C. § 1325(a)(6). 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.

3. [09-46803-E-13](#) MINH DANG AND LOAN LAM MOTION TO MODIFY PLAN
PGM-5 Peter Macaluso 11-8-13 [[84](#)]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2013. By the court's calculation, 39 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 November 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.

4. [11-21303-E-13](#) JAMES/TAMERRA WEAVER MOTION TO MODIFY PLAN
JT-3 John Tosney 10-28-13 [[69](#)]

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 28, 2013. By the court's calculation, 50 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 plan on the basis that Debtor does not authorize payments made to Class 1 creditor Bank of America, N.A. totaling \$77,970.01. The payments were made under the Debtor's plan confirmed March 8, 2013.

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.

5. [11-45806-E-13](#) TONIA HAILEY MOTION TO MODIFY PLAN
MC-4 Muoi Chea 10-25-13 [[70](#)]

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 25, 2013. By the court's calculation, 53 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:

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

The Chapter 13 Trustee opposes confirmation offering evidence that the Debtor is \$170.00 delinquent in plan payments under the terms of 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 is also uncertain Debtor has the ability to make the payments proposed in the modified plan. Debtor's declaration states she has had to make significant cuts in expenses due to the large reduction in her income. Trustee states the Debtor's reduced expenses are tight, especially for the monthly food expense of \$254.56 for a family of two.

Lastly, the Trustee states the Debtor's plan proposes to reduce the interest rate for Nissan Motor Acceptance Corp from 10% to 5%, but the Trustee has disbursed \$1,414.94 in interest to this creditor at the 10% interest rate.

Debtor responds, stating that she is now current on the proposed modified plan payment.

Debtor also argues that she is able to make the payment per month. Debtor is also willing to forego her landline/internet subscription and charitable contribution at \$110.00 per month. Debtor states she is determined to follow through with the proposed modified plan because Nissan Motor will repossess her only vehicle that she uses to go to work.

Debtor argues that the interest rate to Nissan Motor is based on the formula under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) and that it has not filed an objection to this proposed treatment.

Based on the testimony provided by Debtor in support of the proposed plan, the delinquency cured and the interest rate being proper under *Till*, the court grants the motion to confirm.

The modified Plan complies with 11 U.S.C. §§ 1322, 1329 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 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.

6. [12-30207-E-13](#) NAZIR/STELLA SHAKOOR
WW-7 Mark Wolff

MOTION TO MODIFY PLAN
11-5-13 [[121](#)]

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 November 5, 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 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). 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 grant the Motion to Confirm the Modified Plan. No appearance at the December 17, 2013 hearing is required.

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 the attorney fees in section 2.06 are misstated. Debtors paid \$0.00 prior to filing per the order confirming filed July 19, 2013, not the \$1,450.00 as stated in the plan.

Debtor agrees with the Trustee that the amount of the attorney fees stated in the plan is incorrect and states that such error will be corrected in the order confirming the plan.

Based on the above stated revisions, the modified Plan complies with 11 U.S.C. §§ 1322, 1329 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 November 5, 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

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

7. [13-29807-E-13](#) **CESAR/ELVIA VALLEJO** **MOTION TO DISMISS CESAR VALLEJO**
RK-1 **Steele Lanphier** **10-29-13 [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, all creditors, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss Co-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 to Dismiss Co-Debtor is granted. No appearance required.

Debtor Cesar Vallejo requests dismissal as to himself due to his inability to meaningfully participate in the Chapter 13 case. Attempts to coordinate his attendance to the 341 meeting have been unsuccessful due to penitentiary security procedures.

Pursuant to 11 U.S.C. § 1307(b), a debtor may request the court to dismiss a case, if the case has not been previously converted. Here, the Debtors do not seek dismissal of the case, rather, they seek to dismiss one of the joint debtors and for the case to continue in the name of the other joint debtor, due to the incarceration procedures and the difficulty of appearing at the 341 meeting. Based on the Debtor's testimony, the court grants the motion.

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 Co-Debtor 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 granted and Co-Debtor Cesar Vallejo is dismissed from this Chapter 13 Case. Elvia Vallejo shall continue as the sole Chapter 13 Debtor in this case.

8. [13-29807-E-13](#) **CESAR/ELVIA VALLEJO** **MOTION TO CONFIRM PLAN**
RK-2 **Richard Kwun** **10-29-13 [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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 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 29, 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.

9. [13-31109-E-13](#) RONALD DICKERSON AND MARY CONTINUED OBJECTION TO
NLE-1 SANER CONFIRMATION OF PLAN BY DAVID
Gerald B. Glazer P. CUSICK
10-3-13 [[16](#)]

CONT. FROM 10-29-13

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 3, 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:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan was not filed in good faith under 11 U.S.C. § 1325(a)(7). Trustee states that Debtors propose a 36 month plan paying \$75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims.

Trustee argues that it does not appear the Debtors are attempting to restructure their debts in good faith and that other than proposing to pay Debtors' counsel fees of \$2,100.00, Debtors do nothing to restructure their finances. Trustee argues that this Chapter 13 case is nothing more than a

disguised Chapter 7 which appears to be in violation of the Supreme Court's ruling in *In re Dewsnap*, 502 U.S. 410 (1992).

Additionally, the Trustee argues the Debtors' plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors list on Schedule B a potential lawsuit, listed at an unknown value. The asset is exempted on Schedule C also in an unknown amount. The Trustee argues the non-exempt equity, if any, upon the claim being realized should be contributed to the plan.

The Trustee argues that the proposed plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are below median income proposing a 36 month plan paying \$75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims. Trustee argues that Debtors are not proposing all their disposable income into the plan. Debtors list their residential real property in Class 3 of the plan to surrender the property. Trustee states that Debtors testified at the 341 meeting that they have not yet received a notice of default or any foreclosure action by the lender on the property but that they have missed five (5) mortgage payments. Debtors list an expense of \$1,100.00 per month for mortgage or rent. Trustee states that Debtors also testified at the 341 meeting that the expense for rent or mortgage was an anticipated expense that will begin upon the foreclosure of their residence.

Trustee argues that Debtors should be required to commit their projected disposable income into the plan and until the time they are moving, rent is not a necessary expense. Trustee argues the plan payment should be increased by \$1,100.00 per month.

Lastly, the Trustee argues the Debtor may not be able to make the payments called for under the plan. Debtor has only \$270.00 in their bank accounts and no cash. Where the Debtor has not paid rent for 5 months and the Debtor has no cash and nothing in their checking and savings, the Trustee argues that the Debtor's income is less or the expenses are more than scheduled.

CONTINUANCE

The court continued the hearing. No opposition has been filed by Debtors to date.

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.

10. [11-30510-E-13](#) **KIMBERLY PIPER** **MOTION TO MODIFY PLAN**
CAH-3 **C. Anthony Hughes** **11-7-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 40 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 November 7, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [11-26411-E-13](#) JACK MCKARSON MOTION TO MODIFY PLAN
CAH-6 C. Anthony Hughes 11-11-13 [[121](#)]

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 November 11, 2013. By the court's calculation, 36 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)(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. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the plan on the basis that the plan will complete in more than the 60 months proposed, possibly taking 64 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Trustee states this is due to the proposed reduction in plan payment from \$365.00 to \$240.00 and the claim of Butte County Tax Collector coming in higher than scheduled.

The amended Plan 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.

12. [13-24815-E-13](#) HUBERTO/NORMA AGUILAR MOTION TO CONFIRM PLAN
TOG-4 Thomas Gillis 10-30-13 [60]

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, 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, 48 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 30, 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. 13-30915-E-13 PETER/THERESA SMITH CONTINUED OBJECTION TO
NLE-1 Timothy J. Walsh CONFIRMATION OF PLAN BY DAVID
CUSICK
9-26-13 [[18](#)]

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.

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:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that plan relies on a pending Motion to Value Collateral of PNC Mortgage. The court having denied the Motion to Value, the Trustee's objection is sustained.

The Trustee also states that the Debtor appears to be in the process of a trial loan modification, with the trial period plan reducing the mortgage payment to \$1,856.60. The plan calls for ongoing mortgage payments in the amount of \$2,064.81. Therefore, it is not clear to the Trustee if he should pay the amount listed in Section 2.08 of the plan or the trial loan modification payment (\$208.21 less than listed in the plan).

CONTINUANCE

The court continued the hearing to allow the motion to be hearing with a Motion to Value Collateral. However, no motion to value collateral was set for hearing after the denial on October 22, 2013. Therefore, the objection is sustained.

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.

14. [13-34615-E-13](#) **STEPHEN/BARBARA** **MOTION TO VALUE COLLATERAL OF**
MS-1 **CANNIZZARO** **WELLS FARGO DEALER SERVICES**
Mark Shmorgon **11-15-13 [8]**

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, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 15, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 \$8,924.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2011 Ford Fiesta SE Hatchback 4D. The Debtor seeks to value the property at a replacement value of \$8,924.00 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 in December 2010, more than 910 days prior to filing of the petition, with a balance of approximately \$10,714.10. Therefore, the respondent creditor's claim secured by a lien on the asset's title is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$8,924.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services secured by an asset described as 2011 Ford Fiesta SE Hatchback 4D is determined to be a secured claim in the amount of \$8,924.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$8,924.00 and is encumbered by liens securing claims which exceed the value of the asset.

15. [13-34615-E-13](#) STEPHEN/BARBARA
MS-2 CANNIZZARO
Mark Shmorgon

MOTION TO VALUE COLLATERAL OF
WELLS FARGO FINANCIAL NATIONAL
BANK
11-15-13 [[12](#)]

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, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 15, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 \$900.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a Tempurpedic Bed. The Debtor seeks to value the property at a replacement value of \$900.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the property's title secures a purchase-money loan incurred in October 2011, more than one year prior to filing of the petition, with a balance of approximately \$4,265.58. 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 \$900.00. *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 Wells Fargo Financial National Bank secured by an asset described as Tempurpedic Bed is determined to be a secured claim in the amount of \$900.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$900.00 and is encumbered by liens securing claims which exceed the value of the asset.

16. [13-31218-E-13](#) JOSEPH BOTSCH MOTION TO CONFIRM PLAN
AJJ-1 Amir Javideyan 11-5-13 [[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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2013. By the court's calculation, 42 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 23, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [11-30719-E-13](#) THOMAS/GLORIA HALL MOTION TO MODIFY PLAN
BLG-5 Chad Johnson 11-12-13 [[109](#)]

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 November 12, 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 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 \$100.00 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).

The modified Plan 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.

18. [13-30221-E-13](#) MICHAELA VAN DINE AND MOTION TO CONFIRM PLAN
MMV-1 PIOTR REYSNER 11-4-13 [[57](#)]
CASE DISMISSED 9/9/13 AS TO
PIOTR REYSNER ONLY

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 November 4, 2013. By the court's calculation, 43 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. The Chapter 13 Trustee opposes the motion on the basis that the percentage to unsecured creditors is not defined in section 2.15 of the plan or additional provisions.

The Trustee also argues the Debtor may not be able or willing to comply with the payments under the plan. The executory contract being assumed in section 3.02 to Piotr Reysner, who was a former co-debtor in this case, appears to be executed after the petition date without the approval of the court.

Lastly, the Trustee states that the Debtor is married and the spouse is not included in the bankruptcy. Debtor has failed to file a spousal waiver.

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.

19. [13-30721](#)-E-13 MICHAEL/LYNETTE ALLEN CONTINUED OBJECTION TO
NLE-1 Timothy J. Walsh CONFIRMATION OF PLAN BY DAVID
CUSICK
9-26-13 [[22](#)]

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). 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 matter was continued, with no opposition filed by the Debtors. 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 sustain the Objection. No appearance at the December 17, 2013 hearing is required.

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan relies on a pending Motion to Value Collateral of CCO

Mortgage. The court having denied this Motion, the Trustee's Objection is sustained.

CONTINUED HEARING

The court continued the hearing to be heard after the hearing on the Motion to Value Collateral. However, the court denied the Motion to Value Collateral on October 22, 2013. The Debtor has not refiled or set another motion to value for hearing.

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. [13-34521-E-13](#) PHILLIP NAILS
JT-1 John A. Tosney

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
11-19-13 [[11](#)]

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, respondent creditor, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion 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 4647 Windsong Street, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$359,736.00 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 \$436,513.08. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$55,300. 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, N.A. secured by a second deed of trust recorded against the real property commonly known as 4647 Windsong 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 \$359,736.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

21. [12-26623](#)-E-13 NAVRAJ/INDU JASUJA MOTION TO MODIFY PLAN
PGM-6 Peter Macaluso 11-8-13 [[106](#)]

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 November 8, 2013. By the court's calculation, 39 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 the motion on the basis that the plan appears to be silent as to the result and consequences of a prior sale that appears to have occurred, which should cause the Court to find that the Debtor will not comply with the Plan, 11 U.S.C. §1325(a)(6).

The Debtor originally proposed a sale in August 14, 2012, after the plan was confirmed at hearing on June 19, 2012, confirmed by order on July 17, 2012. The sale was to be for \$20,000.00 of the business Tandori Hut with inventory, with an agreement dated June 20, 2012. The Debtor had disclosed this as a former business name on the petition, and the Debtor showed business income of \$5,000.00 monthly in Schedule I, showing both Debtors had employers. The first motion to sell was denied, and a renewed motion was denied. Dckts. 61. Trustee states that the Debtor has since admitted that the sale occurred, that the Debtor received an unidentified amount of proceeds, and that the Debtor is currently paying American Express directly with these proceeds. Dckt. 108. American Express is an unsecured creditor.

Trustee argues that Debtors do not appear to be credible when they confirm a plan that did not contemplate a sale of the business and the next day entered into a contract to sell the business without the approval of the court.

Additionally, the Trustee is uncertain of the commitment period proposed. Section 1.03 of the modified plan states 60 months and Debtor's confirmed plan is 60 months. However, Section 1.01 states Debtor shall pay, "280.00 x 13, then \$365.00 x 45 starting 6/13". Trustee states that month 13 is May 2013 where Debtor's petition was filed April 4, 2012. An additional 45 months would mean Debtor is proposing a 58 month plan.

Trustee also states that Debtor has not filed current income and expense statements as stated in their Declaration to support the plan payment proposed. Debtor's last income and expense statements were filed June 7, 2013 in conjunction with a prior motion to modify which was denied. Debtor's Declaration filed with the current motion to modify provides no explanation for the Trustee's prior objections regarding the \$250.00 increase in income, whether the \$1,387.00 includes taxes and insurance, and the table of expenses included in this Declaration appears to be a duplicate of the prior.

Lastly, the Trustee states that Section 3.02 of Debtor's modified plan includes a commercial lease with a regular monthly payment of \$2,400.00. Debtor's Declaration states Debtors will continue payments directly on the commercial lease. Debtors did not file updated income and expense statements as stated in their Declaration, but Debtor's prior Schedule J does not budget for lease payments. Debtor's previously filed a Motion to Sell Inventory, which was denied. Debtor's Reply to Trustee's prior objection to motion to modify states Debtor is not operating the business and have not sold the property as the order was not granted. Debtor's current Declaration now states they sold the inventory prior to filing their Motion to Approve Sale. Debtor states the money from the sale is being used to pay a stipulated agreement reached in another lawsuit against them with American Express, which is not provided for in the plan.

DEBTOR'S RESPONSE

Debtors respond through Counsel, stating that the intended commitment period is 60 months. However, Debtors do not state how they intend to remedy the plan, which appears to run for 58 months.

Debtors also state they have completed the updated income on December 10, 2013. Dckt. 121. Debtor states it reflects the ability to immediately increase the payments to \$525 per month. Debtors offer no explanation as to why they withheld current financial information until pressed by the Chapter 13 Trustee and facing denial of confirmation. Such current information is critical (as explained by this court on a number of occasions) for the court, the Trustee and creditors to make an intelligent decision on the motion. Excluding that information can only leave the court in an "unintelligent" position - which was obvious to the Debtors. Filing last minute statements intended to support the proposed plan on 7 days notice is not sufficient for this court.

The court is also concerned about the asserted conduct of the Debtors, as the fiduciaries to the Bankruptcy Estate, in selling property of the estate. The first motion to sell was filed on August 14, 2012, Dckt. 46. That motion was denied without prejudice. Order, Dckt. 61. In denying the Motion, the court stated,

"The Chapter 13 Trustee objects to the sale of the real property since the real property is not listed on Schedule A. The Debtors disclose on the Statement of Financial Affairs that they operate a business at 7467 Village Parkway in Dublin, but they do not claim an ownership interest. Debtors do not disclose any executory contracts or unexpired lease on Schedule G.

Debtors admit in their reply that they do not seek to sell the real property, but the business operated at the real property. The motion, however, it quite clear as to the relief Debtors seek. As the sale is not in the ordinary course of business, all creditors are entitled to notice. Fed. R. Bankr. P. 2002(a)(2). In this case, creditors have notice that the Debtor seeks to sell the real property. They do not have notice that the Debtor instead seeks to sell the business located the real property.

This Motion is fatally defective as it does not identify the property to be sold. The Notice of Hearing is fatally defective because it misidentifies the property being sold. If the Debtors wish to sell their business and the personal property of the business then they may file a motion to sell those personal property assets, with that motion actually identifying what is to be sold (and not merely generically describing the assets as business and inventory."

Civil Minutes, Dckt. 59.

The Debtors then quickly returned with a second motion to sell. Motion, Dckt. 62. That motion was denied. Order, Dckt. 77. Again, the court had significant problems with the Debtors' credibility and good faith.

"The undisclosed assets, the multiple amended Schedules, and the failure to disclose payment of property taxes on the eve of bankruptcy significantly impair the Debtors' credibility. The Debtors state under penalty of perjury in the Schedules that the business only has a liquidation value of \$12,000.00 and no goodwill value. For the current sale, the value has risen sufficient to sell it for \$20,000.00, with the buyer paying \$3,000.00 for goodwill. Not coincidentally, the additional values are just enough to pay what the Debtors identify as sale expenses so that they can claim a new exemption in the remaining net proceeds of just less than \$12,000.00 (the amount of the exemption claimed in the business, including the tools of the trade exemption).

The testimony and Purchase Agreement provided to the court is devoid on any information as to the purported \$5,735.00 costs of sale and the \$3,000.00 in purported taxes. Fortunately, from the Debtors' perspective, this works out to be exactly the number of expenses and taxes so that the remaining net proceeds can be within the re-reamended exemption amounts previously stated by the Debtors. The court does not find the Debtors' testimony as to the expenses and taxes to be credible.

The court will not approve a sale which purports to authorize the payment of unidentified expenses and taxes. Further, the court will not approve a sale that may purport to authorize the Debtors to claim the proceeds as exempt. The Debtors have filed a blizzard of amended schedules, including amended exemptions. Further, the amended schedules have disclosed cash accounts for which no plausible explanation has been provided for the failure to disclose when the case was filed or earlier in these proceedings.

Finally, the court has no idea what assets are being sold. The motion sees [sic.] to sell generically described assets consisting of "business inventory, equipment and goodwill located in the property commonly known as 7467-69 Village Parkway, Dublin, California." Dckt. 62. The court has no idea if the inventory consists of two boxes of salt, three chickens, and a bottle of pepper, or a freezer full of food to prepare a banquet for 200 persons. Additionally, the equipment could consist of a one burner stove, hot plate, to pans, and a spatula, or may be a 14 burner Wolf stove, six oven, three walk in freezers, three stainless steel work tables with built in sinks and disposals.

The Business Purchase Agreement states that a list of the equipment being sold is attached, but that disclosure has been omitted from the Exhibit A filed with the court. Dckt. 65. Further, though not disclosed in the Motion, the Business Purchase Agreement allocates \$2,000.00 for the Debtors and estate not to compete within 5 miles of the Dublin, California location of the business being sold.

The court cannot issue an order which effectively states that the Debtors may sell the "Stuff" used in the business. That is what has been requested by the Debtors. The court also will not approve a sale and blindly parrot purported expenses merely because the Debtors say that such expenses exist."

Civil Minutes, Dckt. 75.

It appears that the Debtors, not being able to dictate to the Chapter 13 Trustee and Creditors how they would dispose of, and take the proceeds from the sale of assets of, property of the estate, they disposed on the pretense of complying with the Bankruptcy Code. With no order from the court, the Debtors, in their fiduciary capacity, took property of the bankruptcy estate and disposed of it.

The Debtors' response demonstrates their disdain for the law and compliance with their fiduciary obligations. Instead of doing what every other Chapter 13 debtor, debtor in possession, Chapter 7 trustee and Chapter 11 trustee do,

Not to the delight of counsel, the debtors were placed in a position that they either complete the sale, or be forced from the location and obtain little if any net proceeds.

Response, Dckt. 123. From this response, the Debtors state that since they could not obtain an order which gave them carte blanche to do whatever they wanted with whatever assets they wanted, they just did whatever they wanted because it gave them the result they wanted.

The Debtors offer no evidence in presenting this explanation, instead choosing to merely hide behind the arguments of their attorney. Counsels arguments are not evidence, and may just be (unknowingly) repeating untruths which the Debtors would never state under penalty of perjury.

Debtor states that conversion to Chapter 7 would not benefit the unsecured creditors. The court is not certain of this argument, as conversion was not mentioned by the Trustee in his opposition.

Counsel provides that even though the Debtors completed the sale without court approval, they obtained other other employment, made all payments pursuant to the plan and attempted to obtain a fresh start by attempting to remedy the adversary proceeding from the net proceeds of the sale.

The court is not persuaded by Counsel's arguments that the Debtors' breach of their fiduciary duty and knowing violation of the Bankruptcy Code (having two motions denied) is absolved by their paying some money into a plan.

Counsel argues that the Debtors (as fiduciaries) are now willing to pay the proceeds of the sale back to the Chapter 13 estate over the remaining months of the plan, increasing the plan payments to \$525.00 starting in December 2013. However, the court is not satisfied with the response from Debtors. The "now that you've caught me I'll pay some money

back" does not comply with the Bankruptcy Code or the Debtors' fiduciary duties.

Recently discussed by the Ninth Circuit Court of Appeals in *Drummond v. Welsh* (*In re Welsh*), 711 F.3d 1120 (9th Cir. 2013),

the bankruptcy court noted that it "reviews the totality of the circumstances to determine whether a plan has been proposed in good faith." The bankruptcy court observed that, in *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d 1219 (9th Cir. 1999), we had looked to four factors to determine whether a plan had been proposed in good faith: "(1) whether debtors misrepresented facts in their plan or unfairly manipulated the [Bankruptcy] Code, (2) the debtors' history of filings and dismissals, (3) whether the debtors intended to defeat state court litigation, and (4) whether egregious behavior is present."

Id. at 1123. Under the totality of the circumstances, the actions by the Debtor in selling their business, not only without approval but after two attempted motions to sell that were denied, the subsequent non-disclosure to the court and the parties, and the failure to provide credible testimony in support of the proposed plan, the court finds that the Debtors did not propose the plan in good faith pursuant to 11 U.S.C. § 1325(a)(3).

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.

22. [13-33126-E-7](#) JOHN DOLMAN
TSB-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-19-13 [[18](#)]

CASE CONVERTED TO CH. 7 ON
12/4/13

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

Proper Notice Provided. The Proof of Service filed on November 19, 2013, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee. By the court's calculation, 28 days' notice was provided.

Final Ruling: The Objection to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Objection to Confirmation is dismissed as moot. No appearance required.

The Trustee objects to confirmation of the proposed Chapter 13 plan. However, on December 4, 2013, the Debtors filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 4, 2013. *McFadden*, 37 B.R. at 521. Therefore, the Objection to Plan 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 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 Plan is dismissed as moot.

23. [13-32036-E-13](#) ROBERT BENNETT OBJECTION TO CONFIRMATION OF
NLE-1 Pro Se PLAN BY DAVID CUSICK
11-20-13 [[18](#)]

CASE DISMISSED 12-4-13

Final Ruling: The case having previously been dismissed, the Objection 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [13-33338-E-13](#) LINDA NING OBJECTION TO CONFIRMATION OF
TSB-1 Paul B. Liu PLAN BY DAVID CUSICK
11-19-13 [[16](#)]

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 November 19, 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) 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 decision is to continue the Objection to 3:00 p.m. on January 14, 2013. No appearance at the December 17, 2013 hearing is required.

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 2746 Countryside Drive, Placerville, California. The Debtor seeks to value the property at a fair market value of \$410,200.00 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 \$613,000.00. Creditor Greenstone Country Owners Association's second deed of trust secures a loan with a balance of approximately \$1,415.00. 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 Greenstone Country Owners Association secured by a second deed of trust recorded against the real property commonly known as 2746 Countryside Drive, Placerville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$410,200.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

26. [11-26643-E-13](#) ROBERT/ROSANNA ABELLA
TJW-2 Timothy Walsh

MOTION TO MODIFY PLAN
10-23-13 [[51](#)]

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 23, 2013. By the court's calculation, 55 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 \$1,537.00 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).

The Trustee also argues that the plan will complete in 62 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). In a plan paying 0% to unsecured creditors, the debtors are proposing plan payment of \$2,105.00 a month. This is approximately \$1,994.21 after Trustee fees. The monthly class 1 contract installment is \$1,582.00. This leaves approximately \$412.21 per month to pay the remaining creditors. According to the Trustee calculations, approximately \$443.56 remains to be paid for attorney fees and \$12,293.90 in principal and interest remains to be paid to secured creditors for a total remaining of \$12,737.46. The plan will complete in approximately 30 months (\$12,737.46/ \$412.21). As the debtor has completed 32 months of the plan, the total term will be 62 months.

The Trustee also states that no current statement of income and expenditures has been filed.

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.

27. [13-33645-E-13](#) **DEBRA CURTIS** **OBJECTION TO CONFIRMATION OF**
NLE-1 **Mary Ellen Terranella** **PLAN BY DAVID CUSICK**
11-26-13 [21]

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 November 26, 2013. By the court's calculation, 21 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. 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. No appearance at the December 17, 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 set for hearing December 10, 2013. The court having granted the Motion to Value Collateral, 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 the Objection is overruled, Debtor's Chapter 13 Plan filed on October 22, 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.

28. [10-23147-E-13](#) PAUL/OPHELIA LORRAY MOTION TO SELL
WW-1 Mark A. Wolff 11-19-13 [[39](#)]

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 November 19, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 9941 Kapalua Lane, Elk Grove, California. The sales price is \$732,000.00 and the named buyers are Diane Zanoni-Potts and Dan Potts. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 42.

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 Paul and Ophelia Lorrain, the Debtors ("Debtor"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to Diane Zanoni-Potts and Dan Potts or nominee ("Buyer"), the residential real property commonly known as 9941 Kapalua Lane, Elk Grove, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$732,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 42.
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.

29. [10-42650-E-13](#) WILLIAM/RAE GOODWIN
PLG-3 Steven Alpert

MOTION TO MODIFY PLAN
11-8-13 [[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, parties requesting special notice, and Office of the United States Trustee on November 8, 2013. By the court's calculation, 39 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:

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 the plan and the supporting motion contain conflicting information. The proposed modified plan proposes a dividend of 57% to unsecured creditors while the supporting motion states the percentage will remain unchanged at 56%.

The court confirms the plan on its terms, 57%, which is higher than the 56% which was stated in the Motion.

The modified Plan 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 Motion to Confirm the Plan is granted and the First Modified Chapter 13 Plan filed on November 8, 2013, is confirmed. 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. [10-26951](#)-E-13 ALLEN PEREZ MOTION FOR COMPENSATION FOR
SDH-2 Scott D. Hughes SCOTT D. HUGHES, DEBTOR'S
ATTORNEY(S), FEES: \$1,890.00,
EXPENSES: \$15.18
11-18-13 [[76](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 18, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Compensation 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 for Compensation. 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:

Law Offices of Scott Hughes, Counsel for Debtor, seeks additional attorney fees in the amount of \$1,890.00 and costs in the amount of \$15.18. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Prepared and filed Motion to Modify Chapter 13 Plan, reviewed and responded to Trustee's opposition to the Motion to Modify Plan and prepared an order confirming first modified Plan.

The hourly rates for the fees billed in this case are \$300.00/hour for counsel for 6.3 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$1,890.00 and costs in the amount of \$15.18 are approved and authorized to be paid by the Trustee from the

available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

TRUSTEE'S RESPONSE

The Trustee does not oppose the Motion for Compensation but does not have \$792.84 on hand, having disbursed at the end of October to the Heritage Community Credit Union. However, the Trustee has \$511.13 on hand. The Trustee also states that the Court has issued an order (Dckt. No. 38) approving \$3,500.00 of attorneys fees to Debtor's prior attorney who is no longer eligible to practice law.

The court approves counsel's fees of \$1,890.00 and costs of \$15.18. Whether they can be paid through the plan is a plan issue, not approval of fees. Additionally, if there has been an over-allocation of fees to prior counsel, who cannot perform all of the duties for which the "no-look fees" were allowed, then relief needs to be sought from that part of the order (with appropriate notice to prior 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 for Compensation filed by Counsel for 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, and Law Offices of Scott Hughes, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Scott Hughes, Counsel for Debtor
Applicant's

Fees Allowed in the amount of \$ 1,890.00
Costs Allowed in the amount of \$15.80.

Such fees and costs shall be paid by the Chapter 13 Trustee as provided in the Chapter 13 Plan and Bankruptcy Code, to the extent that such monies exist to pay the fees and costs.

31. [11-46952-E-13](#) ZOLTAN/ELIZABETH RUDASI MOTION TO APPROVE LOAN
JT-5 John A. Tosney MODIFICATION
11-7-13 [[103](#)]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 40 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.

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification on their residence located at 5640 South Haven Drive, North Highlands, California which will reduce the Debtor's monthly mortgage payment to \$471.55. The modification will capitalize the pre-petition arrears and provides for an interest rate of 6.000%.

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 request to waive 10-day Stays of Bankruptcy Rule 6004(g) for Sale of Personally Identifiable Information and Rule 6004(h) for Stay of Order Authorizing Use, Sale, or Lease of Property are inapplicable to a Motion to Approve Loan Modification. Additionally, no basis has been provided the Court for waiver of the Rule 6004 (g) & (h) stay, but merely a request made that it can be waived for unstated reasons. The request for the waiver 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 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 Zoltan and Elizabeth Rudasi are authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 5640 South Haven Drive, North Highlands, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 106, in support of the Motion.

32. [11-26254-E-13](#) NICOLE BROWN MOTION TO MODIFY PLAN
PGM-5 Peter Macaluso 11-8-13 [[95](#)]

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 November 8, 2013. By the court's calculation, 39 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 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 October 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.

34. 10-51555-E-13 **EARL SISEMORE** **MOTION TO MODIFY PLAN**
JT-1 **John Tosney** **11-6-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2013. By the court's calculation, 41 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 November 6, 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.

35. [11-33759-E-13](#) ANTHONY/DAWN BASURTO MOTION TO MODIFY PLAN
PGM-6 Peter G. Macaluso 11-8-13 [[112](#)]

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 November 8, 2013. By the court's calculation, 39 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 \$1,400.00 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).

The Trustee also states that the Debtors have failed to explain decrease to co-debtor income. Co-debtor current income is listed as \$3,877.68. Dckt. 115. The previous statement of income listed co-debtor income as \$4,370.32. Dckt. 59. Debtors provide no explanation for the \$492.64 decrease in income.

Debtors respond, stating that they will be current on or before the hearing on this matter. Debtors do not address the Trustee's concern with the change in co-debtor income. The Debtors offer no evidence (declaration or properly authenticated (or any) exhibits) in response to the Trustee's Opposition. The Debtors offer no evidence how they, already providing for the projected disposable income to fund the plan, can find the "extra" money to make additional payments to cure the default.

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.

36. [11-33759](#)-E-13 ANTHONY/DAWN BASURTO CONTINUED MOTION TO DISMISS
DPC-4 Peter G. Macaluso CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
9-27-13 [[105](#)]

CONT. FROM 11-13-13

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, Debtors' Attorney, and Office of the United States Trustee on September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 Dismiss and dismiss the 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$32,395.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Opposition Filed

Debtors contends that the delay in payment was caused by the negotiations with the holder of the first deed of trust for a loan modification which has now been approved by the Court. Debtors intend to have filed, set and served a Motion to Confirm prior to the hearing of this case.

There is no evidence in opposition to the Motion to Dismiss, just counsel's one-sentence argument in the one-page opposition.

CONTINUANCE

The Court continued the hearing to be heard with the modified plan set for hearing December 17, 2013.

The court having denied the Motion to Confirm the Modified Plan filed by Debtors, the motion is granted.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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 the Chapter 13 case 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 Motion to Dismiss is granted and the case is dismissed.

37. [09-45860-E-13](#) DEBORAH CARLSON
JDM-2 John David Maxey

MOTION TO MODIFY PLAN
11-5-13 [[32](#)]

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 November 5, 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 grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the motion on the basis that the Debtor has not authorized disbursed payments. The Debtor is proposing to reclassify Bank of America, N.A. from class 1 ongoing mortgage to class 4 to be paid outside the plan. The Trustee has disbursed a total of \$53,380.72 in principal and \$8,485.69 in arrears on the claim. The plan does not authorize these payments. The Trustee does not oppose the Debtor authorizing the payments in the order confirming.

Debtor responds, consenting to include the language in the order confirming the plan.

With the language authorizing the payments made to Bank of America, N.A. in the prior confirmed plan in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1329 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 November 5, 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.

38. [10-32560-E-13](#) CORBY HARVEY MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 11-7-13 [[37](#)]

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 November 7, 2013. By the court's calculation, 40 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 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). 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 grant the Motion to Confirm the Modified Plan. No appearance at the December 17, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$190.00 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).

Debtor responds, providing testimony (Declaration, Dckt. 48) that the debtor's plan payment was received the same date the trustee filed the objection and that the debtor is current under the terms of the proposed plan. In light of the testimony and very small default, the court finds such testimony sufficiently credible as to not require a hearing.

Based on the testimony under penalty of perjury that the Debtor is current on plan payments, the modified Plan complies with 11 U.S.C. §§ 1322, 1329 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 November 7, 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.

39. 11-29963-E-13 JOHN WOOD MOTION TO APPROVE LOAN
SDH-2 Scott D. Hughes MODIFICATION
11-12-13 [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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 35 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.

PNC Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification on the real property commonly known as 14851 Blind Shady Road, Nevada City, California, which will reduce the Debtor's monthly mortgage payment to \$1,499.45, with taxes and insurance included. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.000% over the next 40 years.

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 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 John Wood, Debtor, is authorized to amend the terms of his loan with PNC Mortgage, which is secured by the real property commonly known as 14851 Blind Shady Road, Nevada City, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 51, in support of the Motion.

40. [13-31164-E-13](#) JANET LEMERE CONTINUED OBJECTION TO
NLE-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-3-13 [[18](#)]

CONT. FROM 10-29-13

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 3, 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:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtor's best efforts. Debtor is above median income and claims disposable income is -\$798.31. The Trustee notes the Debtor claims continued contributions to family members of \$3,230.00, where no specific evidence has been filed proving this and Schedule J does not clearly show this expense. Debtor proposes a plan paying \$455.00 per month for 60 months paying 0% to general unsecured claims.

Debtor and her non-filing spouse are paying three (3) auto loans and 1 auto lease outside the plan; two will be paid off during the life of the plan. Debtor's non-filing spouse has an auto loan with Chase for a 2005 Toyota Celica GT, which Debtor states is her daughter's car. Debtor's non-filing spouse also has an auto loan with Golden One for a 2007 Ford Expedition which Debtor states is her son's car. Trustee argues that the plan should increase by the amount of each auto payment upon payoff of each respective loan.

Debtor responds, stating that she is not opposed to the Trustee's request of increasing the monthly payment in six months by \$475.00 per month and then \$250.00 per month in 32 months.

Schedule J Computes the Debtors' Monthly Net Income as follows.

Mortgage, Insurance, Taxes	(\$2,265)
Electricity and Heat	(\$250)
Water and Sewer	(\$250)
Telephone	(\$15)
Cell Phone	(\$240)
Cable, Internet	(\$167)
Garbage	(\$31)
Home Maintenance	(\$100)
Food	(\$600)
Clothing	(\$75)
Laundry	(\$110)
Medical and Dental	(\$169)
Transportation	(\$500)
Recreation	(\$57)

Charitable	(\$100)
Health Insurance	(\$23)
Auto Insurance	(\$343)
Lease - 3 rd Car	(\$397)
Car Payments	(\$965)
Personal Care	(\$50)
Pet Care	(\$130)
Non-Filing Spouse's Unsecured Debt	(\$1,000)
Storage	(\$75)
Total Expenses	(\$7,912)

Schedule J, Dckt. 11 at 25-26.

The Debtors list one dependant, a 20 year old son who is a student. No income is shown for the son. The Debtors provide the following income and deduction information.

Income (Deduction)	Debtor	Co-Debtor
Gross Income	\$5,290	\$5,978
Payroll Taxes and Social	(\$1,113)	(\$1,264)
Payroll Taxes and Social Security as Percentage of Gross Income	21.04%	21.14%
Health		(\$471)
Vehicle		(\$40)
Medical Contribution		(\$23)
Average Monthly Income	\$4,177	\$4,180
Combined Month Income	\$8,357	

Based on Schedule J, the Debtor's Monthly Net Income is \$445.00. The proposed plan provides for paying \$445.00 for 60 months. Missing from the financial equation is what contribution is being made (presumably by the adult son who is a student) for the third car.

Also, the Debtors divert \$1,000.00 a month of the Average Monthly Income to pay \$30,000.00 of debts of the non-debtor spouse. This appears to be part of the \$3,230.00 a month in payments for family members referenced by the Trustee as contributions to family members.

These over-median income debtors are able to peek out a 0.00% dividend to creditors with unsecured claims, while paying \$1,000.00 a month of their income for debts outside of the bankruptcy case, a \$397.00 lease of a third car, and \$965 in car payments. The cars listed on Schedule B (Dckt. 11 at 14) are,

- A. 2005 Toyota Celica, 101k Miles.....\$1,000 Value
- B. 2007 Ford Expedition, 90k Miles.....\$7,000 Value
- C. 2007 Infiniti g35, 142k Miles.....\$9,800 Value

On Schedule D there are no secured claims listed. Dckt. 11 at 17. The only Lease listed on Schedule G is for the non-filing spouse's 2013 Infiniti. Dckt. 11 at 21.

Based on the Schedules and Plan, there are no claims secured by vehicles to be paid by the Debtors. However, on Schedule J the Debtor lists \$965.00 in vehicle installment payments - in addition to the \$395.00 a month lease payment.

Due to the inconsistent and incomplete information, the Debtor has not addressed the Trustee's concerns, the court overrules the objection. The court cannot intelligently consider a proposal to increase payments by \$475.00 a month 7 and then an additional \$250.00 a month in month 28 for vehicle payments for creditors not listed on the Schedules.

CONTINUANCE

The court continued the hearing to allow the Debtor and the Trustee to work out the step up payments under the plan. No information has been provided to the court on the progress of the agreement.

To the extent that the Debtor was promptly proceeding in good faith since the October 31, 2013 prior hearing, proposed amendments would have been filed with the court and noticed to creditors. The absence of such indicates that either (1) the Debtor does not desire to prosecute this case in good faith or (2) there has been such a catastrophic economic failure that the Debtor needs to go back to the drawing board with a proposed plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 sustained and Debtor's Chapter 13 Plan filed on August 28, 2013 is not confirmed.

41. [10-50165-E-13](#) DONALD/LUCILE STEWART MOTION FOR HARDSHIP DISCHARGE
RHM-3 Robert Hale McConnell 11-19-13 [[56](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Hardship Discharge 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 for Hardship Discharge.

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 moves the court for discharge without completing the Chapter 13 plan. The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The motion is made pursuant to 11 U.S.C. § 1328(b);
- B. Debtor requests that the court take judicial notice of various items on the docket;
- C. Debtor states that the factual basis upon which the motion is based is stated in the Debtor's declaration.

- D. That the order for discharge, if granted specifically state that the junior lien of Green Tree Financial Services Corporation is voided.

The Motion for Hardship Discharge does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that the court should read the Debtor's declaration for the factual basis upon which the motion is based. This is not sufficient to establish the right for hardship discharge. Furthermore, while the motion mentions 11 U.S.C. § 1328(b), no legal analysis has been provided to the court for authority for a hardship discharge. The court declines to provide legal services to the moving party.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in

Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in

the specific motion or an assertion that evidentiary support exists for such "postulations."

TRUSTEE'S OPPOSITION

The Trustee responds to the motion, stating that the Debtor has not provided authority allowing a court to discharge a debt when the plan was not successfully completed.

The Trustee also states that the Debtor did not provide sufficient information in the declaration to explain why a modification of the plan is not practicable pursuant to 11 U.S.C. § 1328(b)(3).

Lastly, the Trustee states that the Debtor failed to provide a current list of expenses. The Declaration indicates he has reviewed the expenses listed on Schedule J but has not indicated if the expenses have changed.

DEBTOR'S REPLY

Debtor replies, through argument of Counsel, stating that Debtor has provided expenses in an amended Schedule J filed on December 9, 2013, which show that debtor has expenses in excess of the income from his wife. Counsel discusses *In re Frazier*, which was provided by the Trustee in his opposition. Counsel states this case is not on point and does not provide authority for hardship discharge. Counsel provides alternative methods to the Debtor's problem.

Counsel does not provide legal authority for a hardship discharge in his reply, rather discusses case law that he asserts does not apply. Again, the court declines to provide legal authority on behalf of Counsel.

The court notes that Debtor has not filed a declaration stating the current income and expenses. While there were amended schedules filed on December 9, 2013, those relate back to the 2010 filing, not the current income and expenses. FN.1.

FN.1. The moving party filed the declaration of Counsel and the declaration of the Debtor in this matter as one document. In its initial review, the court missed reviewing the Debtor's declaration because this is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(1).

DEBTOR'S HIDDEN DECLARATION

The Debtor has piggy-backed his declaration in that of counsel. As addressed in Footnote 1, each declaration must be filed as a separate

pleading, not made to appear as the addendum of another declaration. In his Declaration, Donald Stewart makes reference to various possible grounds upon which a hardship discharge could possibly be based. However, the court declines to guess as to what grounds the Debtors would elect to state in a motion (subject to the provisions of Fed. R. Bankr. P. 9011) and which are mere arguments or speculation. The court relies upon the grounds stated with particularity as provided by the Movant.

Based on the insufficient motion and evidence provided to the court, 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 Hardship Discharge 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.

42. [12-27366-E-13](#) FLOYD/SUE SNODGRASS
JSO-2 Jeffrey S. Ogilvie

MOTION TO MODIFY PLAN
11-5-13 [[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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 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. FN.1.

FN.1. Debtor filed the First Modified Chapter 13 Plan as an Exhibit in this case. The plan must be filed as a separate document on the docket in order for ease in the court and the parties to access it.

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 November 5, 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.

43. [12-34967-E-13](#) ROBERTA CURTIS MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 11-8-13 [[77](#)]

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 November 8, 2013. By the court's calculation, 39 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 Debtor has not provided sufficient evidence to allow for approval of a modified plan. Debtor confirmed a plan that called for D&M Development to be paid as a Class 2 claim, secured by Tierra Buena Tavern, the Debtor's business. The plan was modified in June 2013, calling for the surrender of the business, supported by a budget showing the Debtor had three minor dependents, one 25 year old significant other, alimony of \$600, unemployment of \$1,890, \$500 income as "boyfriend- including truck payment share" and \$500.00 food expense.

Debtor is now attempting to reduce her ongoing payment from \$475.00 to \$385.00, has filed an amended budget, showing \$496.00 in food stamps and food increased by \$900.00, no unemployment compensation and \$1,800.00 from a new job with pay at \$10 per hour. The Debtor's declaration shows only 24 hours per week, which would result in only \$1,040 per month. No other income other than \$500 contribution is shown on Schedule I.

DEBTOR'S RESPONSE

The Debtor responds, stating she has obtained recent employment and intends to send the most recent pay-stubs to the Trustee for review, as 24 hrs results in only \$1,040, and 40 hours would be \$1,733.60. The Debtor has estimated that this is a full-time job. Debtor does not address the other issues raised by the Trustee nor does she provide any evidence to support these contentions. FN.1.

FN.1. The court is bewildered by counsel's continued practice of arguing "facts" in a response or reply, and not providing a declaration or other evidence. This court has for four years having stressed with the attorneys, and denying many motions for "liar declarations" and no evidence.

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.

44. [13-29769-E-13](#) JOHN JAMES
PGM-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
10-30-13 [[45](#)]

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 30, 2013. By the court's calculation, 48 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. The Trustee opposes confirmation offering evidence that the Debtor is \$900.00 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).

The Trustee also states that Debtor fails to indicate how the balance of attorney fees of \$2,500.00 are to be paid.

Additionally, the Trustee argues that the proposed plan is not the Debtor's best effort. Debtor is above median income and proposes a 60 month plan paying \$900.00 per month with a dividend of 0% to unsecured claims.

Trustee states that Debtor lists on Schedule I gross income for debtor's non-filing spouse of \$6,828.01 and a net income of \$3,931.75. However, according to the paystubs provided by Debtor's counsel to the Trustee, the non-filing spouse's gross income is \$7,781.63, over \$90 higher, and the net income is \$4,078.63. Non-filing spouse's net income is \$146.88 higher than report on Schedule I. Trustee states the plan should be immediately increased by \$146.88.

The Trustee also contends that Debtor's B22 should be amended to accurately reflect Debtor and his non-filing spouses' income. Debtor shows \$1,500.00 per month gross receipts from operation of business on Schedule I, and only \$1,000.00 on Form 22c, a \$500.00 difference. Debtor also claims unspecified "Paycheck deductions" of \$2,896.26 on Line 19, which appears to match Schedule I, and includes a \$300.00 deduction for a 403B loan which

will be paid off within 60 months and should only be claimed at \$65.00, a \$235.00 difference, which would change the monthly disposable income on Form 22c, Line 59, from \$18.45 to \$253.45. Debtor's spouse's income also appears understated, which would increase the amount by another \$146.88.

Debtor deducts \$120.00 per month on Schedule J for life insurance; however, Trustee states no life insurance policies are reported on Schedule B. Trustee argues that this is not an expense and \$120.00 per month should be added to the plan payment.

On Schedule I, Debtor deducts \$300 per month for payment on a 403B loan. Debtor fails to indicate when the loan will pay off, but the Trustee states he indicated at his 341 that the original loan amount was \$4,200.00. The plan payments should increase by \$300 at that time.

Lastly, Trustee states on Schedule J Debtor deducts \$500.00 for Tax Offset for the IRS. In his declaration, Debtor indicates that this amount is necessary to avoid future liabilities. Currently, the Debtor should have 4 months of \$500 for a total of \$2,000 set aside for 2013 tax liability. Where the Debtor has incurred an unpaid 2013 tax liability, the Debtor has not proven they will set aside these monies and thus be able to afford the plan payment, 11 U.S.C. § 1325(a)(6), and the plan does not provide any reporting requirement so that the Trustee can make certain these monies are set aside, such as a quarterly reporting of the balance in the account by supplying bank statements to the Trustee, along with copies of his state and federal tax returns for each year.

DEBTOR'S RESPONSE

Debtor responds, stating that he will be current on or before the date of the hearing. No evidence is provided in support of the Reply, but only the contention of Counsel. Further, no explanation is given as to how this Debtor, pushed to having his projected disposable income consumed such that there can only be a 0.00% dividend to creditors holding general unsecured claim, can make an "extra" \$900.00 appear in a month to cure the arrearage. This arguments would indicate that the Debtor has additional undisclosed projected disposable income.

Debtor also states that Counsel will be seeking fees subject to Local Bankruptcy Rule 2016-16.

Debtor also states that the plan is the Debtor's best effort. While Counsel provides arguments to the Trustee's objections, no evidence has been filed to support these contentions.

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.

45. [13-33071-E-13](#) SANTOKH MAHAL **OBJECTION TO CONFIRMATION OF**
NLE-1 Pro Se **PLAN BY DAVID CUSICK**
11-26-13 [24]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 26, 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:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to provide the Trustee with proof of income for the 60 days preceding filing of the bankruptcy.

Also, the Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

The Trustee states that the Debtors plan payment is insufficient to fund the plan. Class 1 of the Plan, Debtor lists ongoing mortgage payments to Wells Fargo in the amount of \$2,283.00, but Debtors propose a plan payment of only \$325.00.

The Trustee also argues that the Debtor has provided insufficient information relating to assets listed on Schedule B. Debtor fails to give specific detail as to the property being disclosed. The Trustee is therefore unable to determine what assets are being listed and exempt.

Additionally, the Trustee states that the Debtor's plan may not be the best effort. Debtor is below median income and proposes a 36 month plan paying \$388.88 per month with 5% guaranteed dividend to unsecured claims. The Debtor's projected disposable monthly income listed on Schedule J totals \$628.00 and the Debtor is only proposing a plan payment of \$388.88.

Debtor also deducts \$950.00 for ongoing mortgage/rent expense and lists his ongoing monthly mortgage payments to be paid through the plan in Class 1. Trustee states the Debtor's disposable income/plan payment should total \$1,578.00.

The Trustee states that Debtor has listed no debts to be reorganized under the plan. Trustee argues that it appears Debtor has some debts or he would not have filed for Chapter 13 relief. At the 341 meeting, Trustee states that Debtor admitted to having debt owed to the IRS, but this is not disclosed on his schedules.

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.

46. [09-44077-E-13](#) GREGORY/TONYA HILL
SDB-8 W. Scott de Bie

MOTION TO MODIFY PLAN
11-6-13 [[105](#)]

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 November 6, 2013. By the court's calculation, 41 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 November 6, 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.

47. [13-33077-E-13](#) CATHERINE WADE
NLE-1 Joseph Feist

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-20-13 [[24](#)]

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 November 20, 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, 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 secured and priority claims are not provided for in the plan and that Debtor cannot make the payments under the plan.

The Internal Revenue Service filed a claim on November 14, 2013 for a total of \$389,295.07, with \$15,549.87 entitled to priority. This debt is not listed in the schedules or in the Debtor's plan. The claim also lists \$188,583.94 as secured. Debtor will not be able to make the plan payments when this secured debt is not treated.

Tri Counties Bank filed a claim on October 18, 2013, in the amount of \$527,248.39, secured by real property located at 552 Stilson Canyon Road, Chico, California. This property is not listed in the schedule or debtor's plan.

The Trustee argues that Debtor has not proven that they are likely to make the payments. Schedule J shows that Debtor is in hospice care and the plan is a 60 month plan. Debtor has not disclosed to the court the nature of the caretaker's income and why it will continue for 60 months. The Plan proposes to surrender property in Hawaii, rather than the sale or refinance of the property which has \$522,792.61 in equity.

Lastly, the Debtor has not disclosed the existence contents and value of any trusts in which the Debtor has an interest. Trustee states the Debtor did disclose the name of her former spouse, which is reflected on Butte County records, naming Catherine Wade Trustee of the Wade Family Trust.

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.

48. [13-33177](#)-E-13 ROGER GUTIERREZ
NLE-2

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-26-13 [[29](#)]

CASE DISMISSED 12/2/13

Final Ruling: The case having previously been dismissed, the Objection 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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is dismissed as moot, the case having been dismissed.

49. [09-35281](#)-E-13 TODD/KARI ZIEGENHAGEN MOTION FOR COMPENSATION BY THE
BLG-3 Chad M. Johnson LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON,
DEBTOR'S ATTORNEY(S), FEES:
\$2,864.00, EXPENSES: \$100.86
11-22-13 [[104](#)]

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, creditors, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 25 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Compensation has NOT 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 for Compensation. 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:

Bankruptcy Law Group, PC, Counsel for Debtor, seeks additional attorney fees in the amount of \$2,864.00 and \$100.86 in additional expense.

However, proper notice has not been provided. The motion was served on notice provided in Local Bankruptcy Rule 9014-1(f)(1), which requires 28 days notice. Here, the motion and pleadings were only served with 25 days notice. This is sufficient to deny the motion.

OPPOSITION

The Trustee opposes the Motion for Compensation because the motion and supporting pleadings were not served pursuant to Local Bankruptcy Rule 9014-1(f)(1), which requires the motion be filed and served 28 days prior to the hearing date.

ALTERNATIVE RULING:

Bankruptcy Law Group, PC, Counsel for Debtor, seeks additional attorney fees in the amount of \$2,864.00 and \$100.86 in additional expense. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Counsel filed two motions to modify Chapter 13 Plan, filed Motion for Fee and Expenses, communicated with the Trustee's Office regarding Notice of Default and communicated with the client regarding Chapter 13 Plan and Notice of Default.

The hourly rates for the fees billed in this case are \$300.00/hour for counsel, \$135/hour for paralegal, and \$85/hour for Administrative staff. Counsel seeks compensation for 14.1 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$2,864.00 and expenses in the amount of \$100.86 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel also seeks \$100.86 in additional expenses for postage and copies. The total costs in the amount of \$100.86 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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 Compensation filed by Counsel for 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, and Bankruptcy Law Group, PC, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Bankruptcy Law Group, PC, Counsel for Debtor
Applicant's Fees Allowed in the amount of \$2,864.00
Applicant's Expenses in the amount of \$100.86.

50. [10-41581-E-13](#) DAVID/TAVIA CLARK
BLG-3 Chad M. Johnson

MOTION TO MODIFY PLAN
11-7-13 [[72](#)]

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 November 7, 2013. By the court's calculation, 40 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 November 7, 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.

51. [10-36384-E-13](#) SEVERINO/MARIA CAMPANA
JT-1 John A. Tosney

MOTION TO APPROVE LOAN
MODIFICATION
11-18-13 [[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 November 18, 2013. By the court's calculation, 29 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.

GMAC Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification on the residence known as 425 Rennert Way, Dixon, California, which will reduce the Debtor's monthly mortgage payment to \$2,490. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.000% to 3.75%. The payment includes taxes and insurance.

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 request to waive 10-day Stays of Bankruptcy Rule 6004(g) for Sale of Personally Identifiable Information and Rule 6004(h) for Stay of Order Authorizing Use, Sale, or Lease of Property are inapplicable to a Motion to Approve Loan Modification. Additionally, no basis has been provided the Court for waiver of the Rule 6004 (g) & (h) stay, but merely a request made that it can be waived for unstated reasons. The request for the waiver 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 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 Severino and Maria Campana are authorized to amend the terms of their loan with GMAC Mortgage, which is secured by the real property commonly known as 425 Rennert Way, Dixon, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 40, in support of the Motion.

52. [11-49386-E-13](#) CHRISTINA SCOTT MOTION TO MODIFY PLAN
MET-2 Mary Ellen Terranella 11-9-13 [[38](#)]

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 November 9, 2013. By the court's calculation, 38 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:

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 he is unsure of the debtor's ability to pay because the debtor has not filed current statements of income and expense in support of the motion.

Debtor responded, provided a supplemental declaration stating that her income has increased slightly, but she has had to increase her withholding. Debtor states her expenses have not changed since she filed the case. Debtor states as one retirement loan will be paid off, she will make the higher payment of \$831.00 in January 2014. FN.1.

FN.1. Counsel for the Debtor should not rely on the court charitably allow the belated filing of current financial information rather than denying the Chapter 13 Plan. While not involving this counsel, the court has observed a disturbing increase in other attorneys who have adopted an attitude that pleadings are not the subject of truth and honesty, but misstatements and omissions, providing evidence only if facing the denial of the motion. Such practice promotes intentional misstatements and omissions, hoping that something can be slipped by the judge and Trustee. While not this counsel, the court evenly and equally applies the rules, which can result in the denial of motions even for well respected attorneys when they cut the evidentiary corner.

Based on the supplemental declaration provided by the Debtor, the modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

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

53. [10-23787-E-13](#) RICHARD RUYBALID
SAC-7 Scott A. CoBen

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCOTT A. COBEN
AND ASSOCIATES FOR SCOTT A.
COBEN, DEBTOR'S ATTORNEY(S),
FEES: \$7,075.00, EXPENSES:
\$0.00
11-14-13 [[112](#)]

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, Debtor's Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The First and Final Application for 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 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 First and Final Application for Fees is granted. No appearance required.

FEES REQUESTED

Scott A. CoBen & Associates ("Movant"), Counsel for the Debtor, makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period February 18, 2010 through December 17, 2013.

Description of Services for Which Fees Are Requested

Case Administration: Counsel spent 12.1 hours in this category for total fees of \$3,025.00. Counsel describes the tasks performed as preparing for and attending 341 meeting of creditors, reviewing business exam questionnaire, drafting motions such as a motion for sale, a motion to approve release of proceeds, and a motion to approve settlement.

Relief from Stay: Counsel spent 7.6 hours in this category for total fees of \$1,900.00. Counsel describes the tasks performed as opposing a motion for relief, negotiating a situation for relief from stay in exchange for plan confirmation and corresponding with relevant parties.

December 17, 2013 at 3:00 p.m.

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Litigation: Counsel spent 16.6 hours in this category for total fees of \$4,150.00. Counsel describes the tasks performed as conducting discovery, communicating with relevant parties regarding the effect of the bankruptcy and adversary proceeding and their relationship to the State Court Action, and drafting the settlement motion.

Confirmation: Counsel spent 11 hours in this category for total fees of \$2,750.00. Counsel describes the tasks performed as opposing an objection to the confirmation and confirming the plan.

Fee Application: Counsel spent 1 hour in this category for total fees of \$250.00. Counsel describes the tasks performed as preparing fee application.

TRUSTEE'S RESPONSE

The Trustee does not oppose the Motion for Compensation. Trustee states that the case has \$1,981.39 balance on hand and the Plan at \$450.00 per month has already paid guaranteed dividends.

DISCUSSION

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).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services rendered a successful approval of sale of Debtor's residence, stipulation for relief from stay, and confirmation of the Plan.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$250.00/hour for Counsel CoBen for 37.3 hours, \$250.00/hour for Counsel Susan Dodds for 6.0 hours, and \$250.00/hour for Counsel Talvinder Bambhra for 5.0 hours. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The Counsel has been paid \$5,000. The total attorneys' fees in the amount of \$7,075 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$7,075.00
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For a total first and final allowance of \$7,075.00 in Attorneys' Fees and Costs in this case.

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 Allowance of Fees and Expenses filed by [Counsel, Accountant] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Scott A. CoBen & Associates is allowed the following fees and expenses as a professional of the Estate:

Scott A. CoBen & Associates, Counsel for the Debtors
Applicant's Fees Allowed in the amount of \$ 7,075.00,

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

54. [12-27387-E-13](#) ERROL/MELANI LAYTON CONTINUED STATUS CONFERENCE RE:
RHS-1 Mary Ellen Terranella OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
5-23-12 [[30](#)]

Final Ruling: The court having approved the Joint Stipulation continuing the hearing on the Debtor's Plan from December 17, 2013 to March 25, 2013, the hearing on this matter is continued to **3:00 p.m.** on **December 17, 2013**. No appearance required at the December 17, 2013 hearing.

55. [13-33188](#)-E-13 ANDREA KIDD OBJECTION TO CONFIRMATION OF
TSB-1 Seth L. Hanson PLAN BY DAVID CUSICK
11-19-13 [[14](#)]

CASE DISMISSED 12-10-13

Final Ruling: The case having previously been dismissed, the Objection 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. [13-33589](#)-E-13 DANIEL/JOIE SHANE OBJECTION TO CONFIRMATION OF
NLE-1 Julius J. Cherry PLAN BY DAVID CUSICK
11-26-13 [[16](#)]

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 November 26, 2013. By the court's calculation, 21 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 December 9, 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.

57. 10-43691-E-13 VIRGILIO/ALICIA CRUZ MOTION TO VALUE COLLATERAL OF
SDB-2 W. Scott de Bie BANK OF AMERICA, N.A.
11-15-13 [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 November 15, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 131 Sandpiper Drive, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$159,900.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$200,133.57. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$99,000.84. 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 131 Sandpiper Drive, Vallejo, 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 \$159,900.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

58. [12-23291](#)-E-13 STEVEN/LEYNA IRWIN
SDB-5 W. Scott de Bie

MOTION TO MODIFY PLAN
11-8-13 [[68](#)]

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 November 8, 2013. By the court's calculation, 39 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:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$480.00 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).

Debtors respond, stating that they did not realize their first payment fell in November and failed to timely make the payment. Debtors testify they have now made the payment and are current under the modified plan.

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

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

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

The Motion to Confirm the 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 November 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.

59. [10-24194-E-13](#) CYNTHIA RUSSELL MOTION FOR COMPENSATION FOR
PGM-5 Peter G. Macaluso PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$440.00,
EXPENSES: \$0.00
11-13-13 [[130](#)]

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, creditors, and Office of the United States Trustee on November 13, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Compensation 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 Compensation is granted. No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$440.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Debtor requested to refinance. Counsel prepared, filed and defended the Motion to Refinance.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 2.2 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$440.00 are approved and authorized to be

paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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 Compensation filed by Counsel for 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, and Law Offices of Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Peter G. Macaluso, Counsel for Debtor
Applicant's Fees Allowed in the amount of \$440.00.

60. [13-32594-E-13](#) REGINALD PASCUAL
ASW-1

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC BANK USA, N.A.
11-21-13 [[31](#)]

CASE DISMISSED 12-6-13

Final Ruling: The case having previously been dismissed, the Objection 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

61. [13-32594-E-13](#) REGINALD PASCUAL
TSB-1

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-19-13 [[24](#)]

CASE DISMISSED 12-6-13

Final Ruling: The case having previously been dismissed, the Objection 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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

62. [12-24595-E-13](#) CHRISTOPHER DARLING
CAH-1 C. Anthony Hughes

MOTION TO MODIFY PLAN
11-11-13 [[38](#)]

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 November 11, 2013. By the court's calculation, 36 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:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the

Debtor is \$1,120.00 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).

Debtor responds, proposing to make the correct changes and put in the order confirming that the First Modified Plan proposes to pay \$20,210.00 for months 1 through 20 and \$1,120.00 for months 21 through 60.

With the suggested changes made to the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1329 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 November 11, 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.

63. [09-22299-E-13](#) FLOYD/LINDA GUSTIN
JLB-2 James L. Brunello

MOTION TO SELL
11-19-13 [[42](#)]

**APPEARANCE OF JAMES BRUNELLO (PERSONALLY) REQUIRED
FOR DECEMBER 17, 2013 HEARING**

Telephonic Appearance Permitted

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 November 19, 2013. By the court's calculation, 28 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).

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

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 2809 Sheridan Road, Cameron Park, California. The sales price is \$210,000.00 and the named buyers are Craig Cox. The terms are set forth in the Purchase Agreement, filed as an attachment to the Motion. Dckt. 42. FN.1.

FN.1. The moving party filed the motion and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Trustee filed a response, stating he does not oppose the motion but requires clarification regarding the payment of the second deed of trust and whether it will be through the plan.

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 Floyd and Linda Gustin, the Debtor Debtors ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Craig Cox or nominee ("Buyer"), the residential real property commonly known as 2809 Sheridan Road, Cameron Park, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$210,000, on the terms and conditions set forth in the Purchase Agreement, filed as an attachment to the Motion. Dckt. 42.
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.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral. The parties having filed a stipulation resolving the Motion to Value Collateral, the Trustee's objection on this ground is overruled.

The Trustee also argues that the plan does not work mathematically. The plan calls for \$1,800.00 in total plan payments, at the rate of \$50.00 per month for 36 months. The plan proposes to pay \$4,000.00 in attorney fees, 5% Trustee fee and no dividend to the unsecured creditors, estimated at \$4,210.53. The Debtor cannot make the payments and comply with the plan and the plan does not comply with applicable law.

Additionally, the Trustee argues the Debtors' Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors are below median income. However, Trustee states it appears the Debtors may not have reported all income. Debtors received \$1,391.00 in federal tax refunds from their 2012 Tax Return. The Debtors may have received a state refund as well; the Debtors did not provide the Trustee with a copy of the state return. Of the \$1,391.00 refund, \$3,000.00 was from Child Tax Credit. If the Debtors included this income in their monthly income calculation, dividing the income monthly throughout the year, they would have at least \$115.91 per month in additional income.

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.

CONT. FROM 12-10-13

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

Correct Notice Is Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors on November 13, 2013. The Certificate of Service states that a service list is attached. However, there was no list was attached to indicate if Chapter 13 Trustee, United States Trustee or any other parties were served. By the court's calculation, 27 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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 grant the Motion 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:

PRIOR HEARING

The Proof of Service states that the Motion and supporting pleadings were served on creditors on November 13, 2013. The Certificate of Service states that a service list is attached. However, there was no list was attached to indicate if Chapter 13 Trustee, United States Trustee or any other parties were served.

The court continued the hearing to allow the movant to show the pleadings were properly served.

Debtor filed a Proof of Service with the attached list of parties served. Dckt. 72.

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 11861 Cobblebrook Drive, Rancho Cordova, California. Debtor received an offer for \$317,282.96. All costs of sale such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds.

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 the Chapter 13 Debtor Joedalyn Bialk ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Calhoun, Gamthro, Minerva & Gamathro or nominee ("Buyers"), the residential real property commonly known as 11861 Cobblebrook Drive, Rancho Cordova, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$317,282.96, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit C in support of the Motion. Dckt. 68.
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 equal to 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.

