

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**December 10, 2013 at 3:00 p.m.**

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1. [13-32601](#)-E-13 BRIAN ZIELKE AND AMANDA OBJECTION TO CONFIRMATION OF  
APN-1 HILL PLAN BY STERLING JEWELRY, INC.  
Diana J. Cavanaugh 11-7-13 [[26](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 33 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:

Sterling Jewelry, Inc., dba Jared The Galleria of Jewelry objects to confirmation of the Chapter 13 Plan on the basis that Debtors have failed to include the obligation to Creditor in the plan, excluding it from payment. This Objection is laid out by the Creditor as follows:

- a. On July 16, 2013, the Debtors purchased jewelry from Creditor.
- b. The Debtors granted Creditor a security interest in the jewelry for obligation of the Debtors to pay for the jewelry purchased.

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- c. The Debtor's debt secured by the jewelry was \$3,958.09, for which Creditor extracted an interest rate of 24.99%. [It could well be argued that Creditor recognized that the Debtors did not have the ability to pay this obligation and it was likely that the jewelry from these Debtors would be lost. But if such interest rate was replicated among multiple consumers, the loss of this jewelry is being paid by other consumers who are paying an interest rate of 24.99%.]
- d. The Debtors' bankruptcy case having been filed on September 27, 2013, the Creditor's secured claim cannot be valued pursuant to 11 U.S.C. § 506(a).

Objection to Confirmation, Dckt. 26.

Debtors respond, stating that Creditor does not have a secured claim. Debtors state they sold the jewelry which was collateral for this claim prior to filing bankruptcy and is listed as item 10 on Debtors' Amended Statement of Financial Affairs (filed simultaneously with this response).

The evidence of this disposition of the Creditor's collateral is set forth in the Declaration of Brian Zielke, one of the Debtors. He states under penalty of perjury,

- A. "Over two months prior to filing this bankruptcy, we did purchase a wedding ring, an engagement ring, and two Movado watches from Jared Jewelry."
- B. "Our family was in the process of moving from Ohio, and Amanda (my wife) [the co-Debtor] had been looking here for a job."
- C. "At the time we made this purchase in July, we thought Amanda was getting a new job here in Sacramento. We thought our finances looked great."
- D. "Then, the job offer we thought she was getting fell through."
- E. "That's when we ended selling the jewelry to a stranger on Craislist for \$1,100.00 in August."
- F. "We have filed an amended Statement of Financial affairs to disclose the sale. All of the jewelry which was collateral for Jared was sold."

Declaration, Dckt. 34.

#### **Review of Schedules and Bankruptcy Plan**

On September 27, 2013, the Debtors filed their Schedules, stating under penalty of perjury the information stated therein was true and correct. This information includes the following:

- e. The Debtors have \$410 in cash and in bank accounts; \$1,185 in an IRA, 2007 Chevrolet HHR, and a 2012 Kia Sorento for significant personal property on Schedule B. No real property is listed on Schedule A.
- f. On Schedule D the Debtors list a claim secured by the Kia Sorento which exceeds the value of the vehicle, a lien of the Chevrolet HHR which exceeds the value of the vehicle, and a PMSI in their sofa and bed.
- g. On Schedule F the Debtors list \$31,733 in general unsecured claims. This includes a \$5,298.17 claim for Jared Jewelry.

Schedules, Dckt. 1.

On Schedule I the Debtors state that they have combined average monthly income (after tax withholding, dues and deductions) of \$1,959.90. On Schedule J the Debtors list \$1,725.00 in expenses, which includes \$0.00 for clothing, \$0.00 for laundry, \$0.00 for medical and dental, \$96 for auto insurance, and \$0.00 for vehicle installment payments. Schedules I and J, *Id.*

On the Statement of Financial Affairs the Debtors do state that they sold a "wedding ring set, engagement ring" for \$1,800.00 to "Unknown Dayton, OH Stranger." Statement of Financial Affairs Question 10, *Id.*

The Chapter 13 Bankruptcy Plan requires monthly plan payments of \$235.00 for 60 months. Dckt. 5. Of this, \$2,881.00 is to pay Debtors' counsel, \$100.00 a month to the Chapter 13 Trustee, \$110.00 to the creditor for the claim secured by the Chevrolet HHR, and \$8.00 a month for the claim secured by the sofa and bed. The Debtors are surrendering the 2012 Kia Sorrento.

On November 26, 2013, the Debtors filed an Amended Statement of Financial Affairs which reduces the amount received from the July 2013 sale of the jewelry to a stranger in Ohio to \$1,100.00 from the \$1,800.00 previously stated by the Debtors. Dckt. 36.

Debtors state they have been attempting to contact the creditor for resolution of these issues and hopes to resolve the matter before the hearing.

### **Discussion**

The Objection to Creditor raises significant issues concerning the Chapter 13 Plan, the treatment of its claim, the good faith of these Debtors, and the accuracy of their statements under penalty of perjury. First, the Debtors purchased fairly expensive jewelry, in light of their very limited income, and then immediately disposed of it to an "unknown stranger." The court realizes that people or businesses pushed to their financial limits may well do desperate things to survive. This may well include saying whatever they think helps them get through the day (such as an intention to pay for jewelry purchased, that the jewelry was "sold" to an "unknown person," the assets they have, and their income.

As discussed above, this Creditor appears to have known when it sold the jewelry that these Debtors had no ability to repay the obligation, and were likely to do something desperate with it to survive. No information is provided as to the income and expense information given to Creditor by Debtors. Creditor offers no declarations and does not authenticate the exhibits filed with the court. However, it has filed a proof of claim in the amount of \$4,257.81. Proof of Claim No. 4-1. This is *prima facie* evidence of this debt. If this debt was amortized over five years at 24.99% interest, the Debtors would be required to make monthly payments of \$124.92 and pay \$3,238.42 of interest over that short time. (The court computed the loan payment schedule using the Microsoft Excel Simple Loan Calculator program.)

In looking at the receipts attached to the Proof of Claim, the court notes that (1) the engagement ring is listed as having a retail and sales price of \$1,199.99, (2) an additional \$139.99 of the debt is for a "guarantee", (3) the wedding ring is listed as having a retail and sales price of \$1,299.99, (4) an additional \$139.99 of the debt appears to be for a "guarantee" of the wedding ring, (5) a Movaldo watch is listed as having a retail and sales price of \$395.00, (6) an additional \$14.99 is charged for "lifetime battery warranty," (7) \$495.00 is listed as the retail and sales price for a Movaldo Watch, and (8) an additional \$14.99 is charged for a "lifetime battery warranty."

At this juncture, the court is stuck between the Debtors who have disposed of the creditor's collateral to an "unknown stranger" without any documentation, a month after they purchased the jewelry, and the Creditor who appears to have known that the Debtors had no ability to pay for the jewelry, guarantees, and lifetime battery warranties that were sold.

The court sustains the Objection and denies confirmation of this plan. On the issues raised by Creditor, the Debtors have not demonstrated that they are proposing this Plan in good faith. 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.

2. [10-24602-E-13](#) STEVEN/KATHLEEN BARNES MOTION TO VALUE COLLATERAL OF  
SS-5 Scott D. Shumaker J.P. MORGAN CHASE BANK, N.A.  
10-22-13 [[93](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 22, 2013. By the court's calculation, 49 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 9669 Stablegate Rd., Wilton, California. The Debtor seeks to value the property at a fair market value of \$549,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$809,100.00. Creditor JPMorgan Chase Bank's second deed of trust secures a loan with a balance of approximately \$180,670.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank secured by a second deed of trust recorded against the real property commonly known as 9669 Stablegate Rd., Wilton, 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 \$549,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. 13-28203-E-13 LANCE/LISA MCKINNEY MOTION TO CONFIRM PLAN  
JB-1 Jason Borg 10-9-13 [[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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2013. By the court's calculation, 62 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 grant 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 objects to the motion on the basis that the Debtor cannot make the payments. The Debtor is proposing plan payments of \$450.00 for 3 months then \$530.00 for 57 months, however the monthly projected disposable income listed on Schedule J shows \$449.05.

The Trustee also argues that the plan fails the Chapter 7 Liquidation analysis. The Debtor's non-exempt assets total \$50,544.45 and Debtor is proposing a 46% dividend to unsecured creditors, totaling \$26,231.24.

Debtor listed \$7,962.00 in child support arrears on Schedule B, which is not exempted on Schedule C. Debtor has not exempted the equity in the real property at 9124 Laguna Place Way, Elk Grove, California, with a value of \$185,000.00. \$36,318.00 remains non-exempt. Debtor also did not exempt checking and savings account totaling \$1,272.00 on Schedule B. The Debtor claimed \$1,992.45 in exemption in Wells Fargo Business Accounts but the Trustee objected and the court sustained. The Debtor has not exempted \$3,000.00 for a Judgment by Annette Reyes on Schedule B.

The Debtors filed a Reply on December 6, 2013, which presents the following arguments.

- A. The Debtors compute the non-exempt equity in their home to be \$21,517.00, not the \$36,318.00 as computed by the Trustee. The difference is that the Debtors deduct \$14,800.00 for closing costs of any sale if it were conducted by a Chapter 7 Trustee. (Assumes 8% for residential real commission and other costs of sale.)
- B. The total value of the non-exempt assets is \$35,743.45.

Reply, Dckt. 45.

In addition, the Debtors project that a Chapter 11 Trustee would receive \$4,250.00 in statutory fees based on having \$35,743.45 in monies to disburse. After reducing the recovery for creditors in a bankruptcy case for these fees, there would be \$31,493.00 for creditors having general unsecured claims in a Chapter 7 case. The Debtors' Chapter 13 Plan provides for paying \$31,560.00 to these creditors holding general unsecured claims through the Plan. In addition, any support payment monies recovered by the Debtors or the Department of Child Support Services during the term of the Plan will be paid to the Chapter 13 Trustee.

The Debtors also provide their declaration and testify that Lisa McKinney has obtained a part-time job which generates \$25.00 a week and will fund the additional \$80.00 necessary to fund the Chapter 13 Plan.

The Debtors have addressed the liquidation analysis objection of the Trustee. The statutory requirement is that the Chapter 13 Plan provide for "(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;..." 11 U.S.C. § 1325(a)(4). This is the "best interests of creditors test." As stated in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1325.05 [emphasis added],

**"The determination regarding what property creditors would receive in a liquidation should also take into account the administrative expenses that would be incurred in a chapter 7 case.** These expenses may include, in addition to costs of sale, costs such as capital gains taxes incurred by the trustee who disposes of property. This determination may present issues of valuation when the debtor proposes to retain nonexempt property. When the property is sold pursuant to the plan, the amount of the actual net proceeds,

less applicable exemptions, normally determines the amount that must be distributed to creditors.

...  
The liquidation value must be further reduced by the amount of all lien claims enforceable against the property under chapter 7 and by the amount apportionable to the holders of allowed unsecured claims entitled to priority of distribution over the particular allowed unsecured claim holder whose best interests are being measured."

The Debtors satisfy the Chapter 7 liquidation/Best Interests of Creditors requirement under the Bankruptcy Code. Further, the testimony concerning the additional income for the Debtors, while modest, provides the court with evidence of feasibility. The expenses shown on Schedule J, which was filed in June 2013, does not appear to list unreasonable expenses, or fail to list reasonably foreseeable expenses, such as to cause the court to question the good faith of the Debtors and the feasibility of the Plan on those grounds.

Based on the foregoing, the amended 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 the Motion is granted, Debtor's First Amended Chapter 13 Plan filed on October 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. [09-45606-E-13](#) CHARLES/KATHLEEN HIGGINS MOTION TO MODIFY PLAN  
SDB-6 Scott de Bie 10-22-13 [[71](#)]

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 22, 2013. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

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

5. [11-37806-E-13](#) JEARLEAN NASH  
JTN-3 Jasmin Nguyen

MOTION TO MODIFY PLAN  
10-29-13 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 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 Trustee filed opposition, arguing the declaration provided is insufficient because the Trustee cannot tell if the Debtor can afford the plan payments. Trustee argues that the Declaration provided in support of the modified plan does not explain the numerous changes regarding her individual expenses and her business expenses. The Trustee states there is not explanation for the increase in health insurance or the decrease in auto insurance.

The Trustee also argues that the Debtor's modified plan proposes to add post-petition arrears in excess of what is owed to Class 1 regarding two separate properties being paid through the plan. The Trustee states he is not opposed to his if this is the Debtor's intent, but the Trustee's records reflect that Debtor is only two post petition payments in arrears.

Debtor responds, stating that since the time of filing she has had two strokes (March 2012 and November 2012) and has had increased out of pocket medical expenses and higher health insurance. Debtor also explains that she used to pay her two daughters to help out with home cares, but with the decrease in patients, Debtor could no longer pay the wages and her daughters help her out for free. Debtor states the daughters used to help pay some of the expenses but now that the Debtor cannot pay them they cannot help out with the expenses (office supplies, telephone bills). Debtor also states she cannot do as much work on repairs and maintenance due to the strokes and now needs to pay more to have the work done. Debtor also states her auto insurance has decreased because only one vehicle (from the three

before) is still being used for the business and is listed under the business income and expense.

Debtor states that she had the understanding that she had missed three post-petition payments on the mortgages and that is why she included three payments in arrears in Class 1. Debtor would prefer to reduce her proposed plan payment accordingly.

The Trustee responds, confirming that the Debtor has sufficient explained the changes in income and expenses, and no longer opposes confirmation of the prior grounds relating thereto. The court concurs with the Trustee that the plan payment should not be reduced by one month.

The Debtor having provided sufficient explanation on the reduction and increase in expenses, the court grants the motion, subject to the changes mentioned above.

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 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.

6. [08-30708-E-13](#) SIDNEY/JAIMA MOSS  
LC-4 Lorraine W. Crozier

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE DEFAULT  
10-24-13 [[121](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 24, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

**The Motion for Order Confirming Final Cure of Mortgage Default is granted.**  
No appearance required.

Debtors seek an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1. Debtors assert their plan called for 60 monthly payments to the Trustee sufficient to cure a pre-petition delinquency of \$1,689.00 and to maintain the required mortgage payments due to Green Tree Servicing, LLC. Debtors state they have made all payments required by their plan and completed payments on August 25, 2013. On September 10, 2013, the Trustee filed and served a Notice of Final Cure confirming that Debtors had made all payments necessary to cure the pre-petition delinquency. Debtor asserts that Green Tree Servicing, LLC did not comply with Federal Rule of Bankruptcy Procedure 3002.1(g) and failed to file a statement as to whether it agreed that the prepetition arrearage was cured and whether debtors are otherwise current on payments, which was required 21 days after service of the Trustee's Notice of Final Cure.

The Chapter 13 Trustee filed a non-opposition to the Motion.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts. Here, Creditor has failed to file a Response to Notice of Final Cure Payment within 21 days after the service of the notice as required by Federal Rule of Bankruptcy Procedure 3002.1(g). A review of

the Notice of Final Cure Payment indicates that debtors have made all payments under the plan for arrears to Green Tree Servicing, LLC. Therefore, the court finds Sidney and Jaima Moss, Debtors, have cured the mortgage default to Green Tree Servicing, LLC, as required by the Chapter 13 Plan.

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

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

The Motion for Order Confirming Final Cure of Mortgage Default 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 the court finds Sidney and Jaima Moss, Debtors, have cured the mortgage default to Green Tree Servicing, LLC, as required by the Chapter 13 Plan.

7. [09-39708](#)-E-13 MONICA/JOSE VASQUEZ MOTION TO VALUE COLLATERAL OF  
CAH-4 C. Anthony Hughes JP MORGAN CHASE BANK N.A.  
10-29-13 [69]

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

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

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

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

**IT IS ORDERED** that the Motion to Value Collateral is dismissed without prejudice.

8. [09-39708-E-13](#) MONICA/JOSE VASQUEZ  
CAH-5 C. Anthony Hughes

MOTION TO MODIFY PLAN  
10-29-13 [[74](#)]

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

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

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

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

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

9. [12-22208-E-13](#) IRVIN/THERESA WHITE  
EJS-7 Eric Schwab

MOTION TO INCUR DEBT  
11-26-13 [[98](#)]

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, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The motion seeks permission to purchase a 2007 Accura TL, which the total purchase price is \$16,500.00. Debtor's previous vehicle, after being totaled, netted insurance proceeds in the amount of \$3,500.00. Debtor visited a number of dealerships and received offers on similar vehicles at interests rates of 24.99%. Debtors then researched taking out a loan with Ms. White's 401(k) plan, which would have a 4.250% interest rate. In order to complete the purchase, Debtors seek to borrow \$17,871.00, which would leave a monthly payment of \$198.80 with 98 months to repay the loan. FN.1.

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FN.1. The court notes that this motion, and the solution found demonstrates the best in collaboration between consumer debtors and their counsel to find a good economic solution for a Chapter 13 Debtor. Rather than paying a creditor the 24% interest demanded, the Debtors have been able to self fund their loan with an IRA at a 4.25% interest rate. Even allowing for a cost to the monies not being invested in an IRA, the economic benefit to the Debtors is substantial and manifests financial skills which should serve the Debtors well in the future.

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

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

**IT IS ORDERED** that the Motion is granted and Irvin and Theresa White, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 101.

10. [11-20314-E-13](#) HILARIO/BRIGIDA BONCATO MOTION TO MODIFY PLAN  
NUU-3 Chinonye Ugorgi 10-30-13 [[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 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, 41 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 may not have been proposed in good faith or is in the Debtor's best effort. Debtors' modified plan proposes to reduce the commitment from 48 months to 40 months. The Statement of Current Monthly Income and Calculation of Commitment Period From B22C indicates Debtor is under median income and the commitment period is three years. Debtors' motion and declaration state Social Security benefits have increased enabling the debtors to make additional payments. The Trustee states that his reason is not sufficient to warrant a reduction in plan term, an issue that the Trustee raised in his last objection.

The Trustee states that the Debtor's Schedule J does not reflect any expenses for travel to the Philippines or for living expenses while in the Philippines. The Debtors state that they plan to continue shuttling back and forth.

The Debtors offer no response.

### **DISCUSSION**

As the Trustee points out, these Debtors and this Plan Modification have been the subject of a prior decision by this court. Civil Minutes, Dckt. 65. With respect to the reason that they Plan can be paid sooner, an increase Social Security Payments, that explanation does not trouble the court. Though the court is not hamstrung at not including Social Security income for an under-median income debt as it under the mechanical computation of projected disposable income for an over-median income debt (see *Drummond v. Welsh*, 717 F.3d 1120 (9th Cir. 2012)), these Debtors leave assets and issues hanging.

The Debtors confirmed their plan on July 2, 2011, which provided for \$159.37 a month of projected disposable income being paid creditors. While the Debtors only had to fund it for 36 months, it was necessary for the Debtors to have a 48 month plan to achieve their bankruptcy goals.

In August 2013, 32 months into the Plan, the Debtors came to the court seeking to modify the plan. The Debtors sought to shorten the Plan because their projected disposable income had increased from \$1,829.00 a month to \$2,062.00 a month. In the declaration seeking to confirm that Modified Plan the Debtors did not state when their projected disposable income had increased due to the increase in the Social Security payment received by Mrs. Boncata. Declaration, Dckt. 58. The Debtors filed an amended Schedule I, which on its face states that the Debtors had the additional Social Security Income since the case was filed in 2011. Dckt. 55. If this statement under penalty of perjury was accepted as true, then the Debtors have hidden almost \$200.00 on monthly projected disposable income for almost three years.

In support of the present Motion to Confirm the First Modified Plan the Debtors have filed their joint Declaration. Dckt. 72. They reconfirm that they amended their Schedule I to accurately state their income (which, if taken on its face as being a truthful statement under penalty of perjury, the Debtors have hidden an additional \$200 a month of projected disposable income since this case was filed).

As the court noted in the Civil Minutes from the prior Motion to Modify,

"It is also very troubling that the status of the rental property in the Philippines was not mentioned by the Debtors until it was raised by the Trustee. When the Trustee noted that the Debtors previously testified that they were receiving \$400.00 a month from that property, the Debtors responded (merely with the arguments of counsel, not supported by a declaration) that the "no longer have a renter in the Phillippines property." Therefore, they do not have the \$400.00 a month income. The Debtors' counsel carefully doesn't present any argument as to when the Debtors lost the renter, whether they are in the process of re-renting the property, or why they continue to retain the property and pay the related expenses if they are not renting the property.

The Debtors have not provided the court with evidence in support of modifying a Chapter 13 Plan pursuant to 11 U.S.C. § 1329. Further, they have not provided the court with a basis to shorten the plan term.

The court's review of the Schedules and the First Modified Plan raises several issues. One is why and how the Phillippines rental property, which is not now generating any rental income, is not being made available for creditors. In the First Modified Plan the Debtors continue making \$1,646.00 a month for their residence in Elk Grove, California. The Philippines property is listed on Schedule A as having a value of \$65,000.00. Dckt. 1 at 19. This is identified as "This is debtors' Retirement home. Debtor is retired and joint debtor is disabled. They plan to retire to the Philippines in the very near future." On Schedule C the Debtors claim a \$65,000.00 exemption in the Philippines property pursuant to California Code of Civil Procedure 704.200, which provides,

(a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

Schedule C, Dckt. 1 at 23.

In response to Question 15 of the Statement of Financial Affairs the Debtors state under penalty of perjury that the only address that they lived prior to the commencement of the bankruptcy case was 5533 Laguna Park Drive, Elk Grove, California. Dckt. 1 at 38.

On April 27, 2011, the Debtors filed an Amended Schedule C which changed the exemption being claimed for the Philippines property, stating,

"This is debtors' Permanent home. Debtor is retired and joint debtor is disabled and undergoing cancer treatment in the United States. Debtors' plan to finally move to the Philippines upon completion of the cancer treatments"

Dckt. 33 at 2. On Amended Schedule C the Debtors asserts an exemption in the Philippines property based on California Code of Civil Procedure 704.730(a)(3), which states the amount of a homestead exemption. However, this section does not state in what property and when an exemption may be claimed. California Code of Civil Procedure § 704.720 provides that an exemption may be claimed in the proceeds from the sale of a homestead. The term "homestead" is defined as follows,

(a) **"Dwelling"** means a place where a person resides and may include but is not limited to the following:...

(c) **"Homestead"** means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the

dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

See *In re Anderson*, 824 F.2d 754 (9th Cir. 1987) ("automatic" homestead exemption can only be claimed by a debtor who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling. Cal. Civ. Proc. Code §§ 704.710(a), (b), (c), 704.720, 704.730, 704.740."

There does not appear to an objection having been filed to the above claimed exemption. (Which is curious, given that the Debtors state under penalty of perjury that they did not reside in the Philippines property prior to the commencement of the bankruptcy case.) However, the Code Section cited on Amended Schedule C only identifies a dollar amount of an exemption, but not the basis for an exemption. The court is unsure whether this is an issue for any party in interest, or whether there is no dispute as to when an exemption has been sufficiently claimed in this case."

Civil Minutes, Dckt. 65.

It appears that the Debtors own a \$65,000.00 unencumbered investment property in the Philippines which is not provided for in the Plan. There is already a confirmed Chapter 13 Plan in this case which binds the Chapter 13 Trustee, creditors, and the Debtors. The court will not *sua sponte* reopen consideration of that confirmation. 11 U.S.C. § 1330 provides that there is a 180-day period for a party in interest to seek revocation of a confirmation order. (This does not limit the inherent power of this court or the provisions of Fed. R. Bankr. P. 9011 concerning the conduct of the parties and counsel.)

However, if the Debtors voluntarily want to put confirmation of a plan before the court, then all issues of confirmation for the court and parties in interest are before the court. This includes whether such a Modified Plan, which includes the Debtors keeping their California Residence and a \$65,000.00 investment property in the Philippines is proper under the Bankruptcy Code and in good faith. The Debtors can decide if trying to cut a couple months off of the plan payments is worth setting aside their existing confirmed plan.

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

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

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

The Motion to Confirm the 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.

11. [11-36314-E-13](#) DEREK/LATANYA FISHER MOTION TO MODIFY PLAN  
BLG-4 Chad Johnson/Paul Bains 10-15-13 [[80](#)]

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 15, 2013. By the court's calculation, 56 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 \$455.00 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, 1325(a), and 1329 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. [13-30914-E-13](#) **MICHAEL SIMMS** **CONTINUED OBJECTION TO**  
**NLE-1** **Peter Macaluso** **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 the Debtor cannot make the payments under the plan or comply with the plan. Trustee States that Schedule I lists income from the debtor's significant other in the amount of \$1,000.00 per month and Debtor filed an attachment to Schedule I, which lists anticipated additional income from boxing income. Trustee states the Debtor may not have the ability to make the plan payments set forth in the proposed plan, since the income from the boxing matches is anticipated and has not yet been earned or generated.

The court continued the hearing to allow the parties to file and serve supplemental documents.

**TRUSTEE'S RESPONSE**

The Trustee continues to oppose confirmation offering evidence that the Debtor is \$200.00 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). Trustee states that the Debtor failed to file supplemental documents by the date set by the court, November 19, 2013.

**DEBTOR'S RESPONSE**

Debtor filed a response on November 19, 2013, stating that he has been boxing for 22 years and received numerous awards. Debtor states boxing is the best way for him to earn money to pay bills and complete payments in a timely fashion. Debtor states his five year plan to train and further his boxing career has been filed with the court and provides that he hopes to work with business owners to land sponsors. Debtor also states that he has a torn biceps which will require surgery before the end of the year, followed by 4-6 weeks of rehabilitation. Dckt. 44.

Debtor's Counsel, Peter Macaluso, states that he has been involved in boxing for 35 years, is a certified AAU Trainer. Mr. Macaluso states the letter by the County of Sacramento Department of Child Support Services supports the plan. Dckt. 43.

Debtor also states that he will be current on or before the hearing.

Based on the delinquency, 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.

13. [13-31916-E-13](#) DALE/LEILANI MILLER  
DLM-4 Pro Se

MOTION TO VALUE COLLATERAL OF  
ONEWEST BANK, FSB  
11-8-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 8, 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 to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 514 Hummingbird Way, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$215,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$296,576.00. OneWest Bank, FSB's second deed of trust secures a loan with a balance of approximately \$134,200.00. 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 OneWest Bank, FSB secured by a junior deed of trust recorded against the real property commonly known as 514 Hummingbird Way, Suisun City, 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 \$215,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [12-41817-E-13](#) TRUDY KUTZ MOTION TO CONFIRM PLAN  
SAC-3 Scott Coben 10-17-13 [[69](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 54 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 17, 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.

15. [13-32717](#)-E-13 MICHELLE MENDOZA MOTION TO VALUE COLLATERAL OF  
DMA-1 David M. Alden BANK OF AMERICA, N.A.  
10-26-13 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 26, 2013. By the court's calculation, 45 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 4211 Lingrove Way, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$216,000.00 as of the petition filing date. The Declaration of the Appraiser has been currently filed with this Motion as evidence.

The first deed of trust secures a loan with a balance of approximately \$247,718.64. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$41,307.26. 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 4211 Lingrove Way, Carmichael, 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 \$216,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

16. [13-26718-E-13](#) ESPERANZA ZAVALA  
PPR-1 Peter G. Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
11-1-13 [[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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditor, and Office of the United States Trustee on November 1, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

**Tentative 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).

**The court's tentative decision is to deny the Motion to Approve the Loan Modification as moot.** 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:

JP Morgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification with the Debtor with respect to a mortgage on the real property commonly known as 2267 Atherton Court, Fairfield, California. The loan modification has the following terms:

Years	Interest Rate	Monthly Principal & Interest Payment Amount
1-5	2.000%	\$914.13
6	3.000%	\$1,062.00
7	4.000%	\$1,218.09
8-23	5.000%	\$1,278.08

Debtor filed a reply, stating that this Loan Modification was already approved by this court on October 22, 2013. Debtor states the payments will be made accordingly. Debtor argues that this motion is no longer ripe and requests that the Creditor not charge the Debtor's account for the motion.

Based on the court's prior order granting the Motion for Approval of Loan Modification with JPMorgan Chase Bank, N.A., the motion is denied as moot. Civil Minutes, Dckt. 43; Civil Minute Order, Dckt. 45.

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

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

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

**IT IS ORDERED** that the motion is denied without prejudice as moot.

17. [10-43419-E-13](#) ERWIN/CHRISTINE OSIAS  
SDB-3 W. Scott de Bie

MOTION TO APPROVE LOAN  
MODIFICATION  
10-23-13 [[42](#)]

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 32, 2013. By the court's calculation, 48 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 with the following terms and conditions:

Years	Interest Rate	Monthly Principal and Interest	Estimated Monthly Escrow Payment
1-5	4.280%	\$1,554.56	\$1,783.60
6-23	4.375%	\$1,566.21	May adjust periodically

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

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

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

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

**IT IS ORDERED** that Ewin L. Osias and Christine P. Osias, Debtors are authorized to amend the terms of their loan with Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., which is secured by the real property commonly known as 143 Molina Street, Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 45, in support of the Motion.

18. [13-30919-E-13](#) **BUN AUYEUNG AND SOO TSE** **MOTION TO RECONSIDER**  
**PGM-2** **Peter G. Macaluso** **11-22-13 [60]**

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, Chapter 13 Trustee, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to amended the order correcting it to state that the Motion to Avoid Lien, PGM-1 is denied without prejudice, and the balance of the Motion to Reconsider is denied.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors request that the court reconsider and reversal of several rulings:

- a. the Order on Trustee's Amended Objection to Confirmation of Plan and Motion to Dismiss Case,

- b. the Order on Objection to Confirmation of Plan by Barton and Paula Christensen, and
- c. the Order Denying the Motion to Avoid Lien of Barton and Paula Christensen.

Debtor rehashes the arguments from the hearing at the Objection to Confirmation, that they are entitled to receive a discharge because they are outside of the 4 year time period.

Federal Rule of Bankruptcy Procedure 9013 requires that a motion state with particularity the grounds upon which relief is requested. That motion must be supported by competent evidence. The court starts with what is stated with particularity in the present Motion.

- A. The Debtors provided copy of the most recent tax return for the year prior to filing, 11 U.S.C. § 521(e)(2)(B) and (C).
- B. The 2007 and 2008 tax returns were the last filed.
- C. Debtors' counsel has elected to be paid hourly rather than a set fee.
- D. Counsel projects that his fees will be \$5,000.00.
- E. The Debtors did not receive a Chapter 7 discharge in a case filed within four years of the commencement of this Chapter 13 case being filed.
  - 1. Debtors' bankruptcy case 09-35065 was filed on July 21, 2009.
  - 2. The current Chapter 13 case was filed on August 19, 2013, which is more than four years after the commencement of the prior case.

Motion, Dckt. 60. No evidence, copies of pleadings filed in this case, transcripts of any hearings, or personal knowledge declarations have been filed.

#### **TRUSTEE'S OPPOSITION**

The Trustee opposes the motion on three grounds. First, the Trustee states he is not sure the motion is in the proper format, as it requests reconsidering at least three separate orders in one motion.

Second, the Trustee states that the Debtors plan is not confirmable. Debtors have proposed a plan paying \$100 per month for 36 months and a lump sum of \$13,000 to be paid on or before November 25, 2013 paying secured claims of County of Sacramento and Barton and Paula Christensen in Class 2, surrendering secured claims against real property at 5851 34th Avenue, Sacramento, California and paying 100% to general unsecured claims. Debtors' plan indicates in Class 2 that the claim of the Christensen's total \$158,854.60 but propose to pay only \$7,000.00, the Debtors are essentially valuing the claim but have filed a motion to avoid lien.

The plan calls for 100% payment of unsecured claims, but lists the unsecured amount to be paid at \$2,547.31, which appears to include only the claims listed on Schedule F. Trustee argues that pursuant to 11 U.S.C. § 506(a)(1) the security of a claim is secured to the extent of the value of the property and the balance of the claim shall be an unsecured claim against the estate. Therefore, Trustee states that if the secured claim of Christensen is determined to be \$7,000, the balance of the lien \$151,854.60 would be a general unsecured claim and would need to be paid in full pursuant to the 100% guaranteed divided proposed.

Additionally, Trustee states that the Debtors have defaulted under the proposed plan, as the Debtors are delinquent \$13,000 proposed to be paid no later than November 25, 2013. In Section 1.02 of the plan, Debtor indicates an additional payment of \$13,000 is to be paid into the plan by means of a gift to the Debtors. To date no such payment has been made, the Debtors have paid in a total of \$300.00 through November 27, 2013.

Lastly, Trustee states that if the court reconsider the motions and orders, that the court reconsider the Creditor's motion seeking denial of confirmation on the basis that the plan was not filed in good faith. The Trustee is not certain that the Court has considered the requested relief in light of the Debtor's history and the proposal of a plan that clearly will not pay as proposed.

#### **DISCUSSION**

The Motion seeks to have the court reconsider several different orders: the Order on Trustee's Amended Objection to Confirmation of Plan and Motion to Dismiss Case, the Order on Objection to Confirmation of Plan by Barton and Paula Christensen and the Order Denying the Motion to Avoid Lien of Barton and Paula Christensen. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join several Motions to Reconsider. FN.1.

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FN.1. But for the Debtors having counsel who regularly appears in this court and is known for striving to comply with the law, rules and procedures of the Bankruptcy Court, one could think that improperly combining various orders in an omnibus Rule 60(b) motion was done in an effort to confuse the court and cause unnecessary cost and expense on creditors. Merely because it is a cheap, easy, way to throw issues at the court (on what may be a "wing and a prayer"), this is not proper.  
-----

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing

pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. The Motion is denied for this independent ground.

**Prior Ruling and Bankruptcy Case**

Debtors' prior bankruptcy case was filed as a Chapter 13 case on July 21, 2009. Bankr. E.D. Cal. No. 09-35065. The case was converted to one under Chapter 7 by order filed on February 25, 2013. 09-35065 Dckt. 216. In deciding to convert the case to one under Chapter 7, the court found that the Debtors were not prosecuting the Chapter 13 case in good faith, including affirmatively making misrepresentations to the court.

"Rather than proceeding in good faith to timely comply with the confirmed bankruptcy plan, the Debtors have demonstrated that they are merely engaging in a gamble on the current real estate market. The Debtors are gambling with the creditors' money that the market will rise, allowing the Debtors to pocket more money from a sale. If the market goes down, then creditors can bear the risk (suffer the loss).

The Debtors have obtained two and one-half years of bankruptcy court protection, with all to show is that they will, sometime in the future, do what they have promised to do in the past if they determine that the real estate market has risen high enough for them to make more money by improperly delaying creditors.

The Debtors are not appearing, testifying, and making representations to this court in good faith. Rather, they have acted to mislead the court, creditors, the Chapter 13 Trustee, and other parties in interest.

No evidence is filed in opposition to the Motion to Dismiss, but merely short arguments of counsel. Such argument is not evidence of the facts alleged therein. The absence of such evidence causes the court to infer that such information is wholly unsupported. Even when afforded the opportunity to file supplemental pleadings, the Debtors merely had their attorney file a Supplemental Reply arguing why the case should not be dismissed. The Debtors have been careful not to make any statements under penalty of perjury to the court.

At the January 9, 2013 hearing the Debtors asked the court to continue the hearing to allow Debtors to sell the property. Such would allow them to profit from their misrepresentations to the court. Debtors' supplemental opposition states that Debtors have obtained a real estate agent and that the sale price is listed as \$200,000 instead of the \$250,000 initially stated by Debtors. Counsel for the Debtors argues that a modified plan will provide for all increases in value to go to creditors, with the Debtors

reducing their exemption. However, the court's review of the docket indicates that a modified plan has not been filed.

In confirming the current Chapter 13 Plan, the Debtors testified under penalty of perjury that they would sell their real property to pay all lien holders and Class 2 claims in full. Declaration, ¶¶ 6, 7, Dckt. 168. In fighting to confirm the plan against opposition on the Debtors' continuing delay, the Debtors represented to the court that they had entered into a one-year listing agreement, September 26, 2011 through September 26, 2012, and were listing the property for sale for \$290,000.00. Reply, Dckt. 177. Further, "The debtor's [sic.] intend to reduce the asking price accordingly over the 12 month period so that the sale occurs on or before September of 2012..." *Id.*

The court harmonized the requirements for equal monthly payments specified in 11 U.S.C. § 1325(a)(5)(B)(iii)(1) with the rehabilitation aspect of Chapter 13 and the ability of a debtor to provide for the prompt orderly liquidation of assets through a plan to provide for creditors and protect exempt interests in assets. Civil Minutes for October 14, 2011 Confirmation Hearing, Dckt. 180. The court expressed clear concern over the Debtors' continuing failure to address the issues raised in the prior confirmation hearing (confirmation denied) and unreasonable delay in the prosecution of a plan and liquidation thereunder.

Though the court's November 14, 2011 confirmation order expressly requires that the Debtors' shall immediately list the property for sale at \$290,000.00 and shall have the property liquidated (sold) by September 2012, the Debtors did not actively attempt to sell the property. Rather, they impeded the sale of the property, seeking to gamble that the real estate market would increase and they could pocket more the sales proceeds.

The Debtors, in responding to this Motion, have been very careful not to provide any explanation under penalty of perjury as to the efforts they made to market and sell the property. From this lack of testimony the court infers that such testimony would be adverse to the Debtors - showing that they did not attempt to actively market and sell the property as required under the confirmed Fourth Amended Chapter 13 Plan.

...

The Debtors' conduct in this case under the confirmed plan have been in bad faith. Though representing to the court, and being ordered under the confirmed Fourth Amended Chapter 13 Plan, to promptly proceed with the liquidation of the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, the Debtors did not prosecute the case. The court finds that the Debtors did not

prosecute the case because they were hoping realize a greater gain, gambling that the real estate market would appreciate, allowing them to exempt even more of the sales proceeds.

The gambling on a rise in the real estate market was not in good faith, and directly caused creditors to suffer unreasonable delay to their prejudice. While the Debtors have continued in the possession and use of the property without making regular, equal monthly payments to creditors with liens on the property. While a debtor may proceed with an orderly, prompt liquidation of assets as part of a Chapter 13 Plan, they cannot falsely promise to liquidate the property. Here, the Debtors actively misrepresented to the court that they would liquidate the property, while intending not to sell the property but allow it to hopefully appreciate in value. The Debtors secret, unstated "plan" has been to hold the property idle in the Chapter 13 case and then stumble in to "amend" the confirmed plan to have more time to gamble on appreciation of the property.

The Debtors' opposition that by delaying the prompt liquidation the property is alleged to have increased by \$25,000.00 does not help their cause. Just because they believe that they can take more sales proceeds by violating the court order is not a basis for saying that violating the court's order and confirmed Fourth Amended Plan are justified. The Debtors' Opposition reflects that what they want, and always wanted, was a 60-month holding period in which they did not make any payments to creditors holding secured claims. Dckt. 201. Chapter 13 does not give such a "free stay," even when the Debtors attempt to manufacture a step transaction consisting of false promises to liquidate the property, and then when they fail to, request "only a little more time."

If the Debtors had any good faith intention to market and sell the property in an orderly liquidation, they would have done so within the time period specified in the confirmed Fourth Amended Chapter 13 Plan.

Given the Debtors' conduct, the court concludes that conversion of the case to one under Chapter 7 is in the best interests of creditors. If the property is increasing in value, then the estate and creditors may well benefit from such increases. Creditors and the Chapter 7 trustee may well conclude that grounds exist for objecting to all or part of any exemption claim in the property or other assets based on the Debtors' conduct.

The court is convinced that only an independent fiduciary can consider how this estate was handled and what assets exists for the estate and to be properly be distributed to creditors. A Trustee can also dispassionately consider the professional fees paid in this

case, as well as monies which the Debtors and estate received in the violation of automatic stay adversary proceeding, or collection any unpaid amounts of such judgment.

#### **Additional Arguments at the Hearing**

At the hearing the Debtors' counsel passionately argued that the court dismiss the case or allow these Debtors to dismiss the case rather than having it converted to one under Chapter 7. The Debtors represented to the court that the reason they wanted to dismiss the case was so that they could file a new Chapter 7 case on February 21, 2013, the day after this hearing.

When pressed as to why the court should not just convert the case, Debtors' counsel admitted that the reason was that the Debtors wanted to claim an even larger homestead exemption in that the state law exemption had increased since they commenced this Chapter 13 case on July 21, 2009.

It was explained to the court that after payment of the one claim secured by the real property, that of Christensen which the Debtors assert is \$25,000 - \$30,000, there will be significant sales proceeds in which the Debtors want to claim their homestead exemption. Their current exemption is \$150,000, and they want to now take advantage of an increase to \$175,000.

On the one hand the Debtors feign an inability to sell the real property as required by the Chapter 13 Plan and their commitment to creditors due to it not having sufficient value, and now they argue that it would be unfair to convert the case because it prevents them from pulling another \$25,000 of value out of any sales proceeds. If the court were to accept this argument it would be falling further victim to the Debtors' fraud upon the court and creditors.

These Debtors committed as part of their Chapter 13 Plan to conduct an orderly liquidation sale of the property. See November 14, 2011 Order Confirming Plan, Dckt. 182. The court confirmed a plan which allowed the Debtors until September 2012 to complete a sale of the property. This case having been filed in 2009, the Debtors had effectively used the Chapter 13 case to forestall any payment to Christensen for more than 3 years before they had to complete the promised liquidation of the real property. The Debtors convinced the court that the delay in confirming the plan for two years, and then getting another year to sell the property was reasonable, even though they had not made any plan payments to Christensen.

But the Debtors did not liquidate the property, and based on the facts of this case, the court concludes that they never intended to liquidate the property by September 2012. These Debtors are represented by knowledgeable counsel who clearly understood, or had the ability to understand, that the Debtors committed to and the order confirming the plan required the property to be sold by September 2012.

At the hearing counsel for the Debtor expressed some confusion over the order providing for the sale to be completed by September 2012, at one point disputing that the order so provided. The court recited the provision of the order, as well as noting for Debtors' counsel that he is the one who actually prepared the order confirming the Plan. There is, and there was, no bona fide confusion that the Debtors' promised and were ordered to complete the liquidation of the property by September 2012.

...

The court finds that the Debtors have prosecuted this Chapter 13 case and the confirmed plan in bad faith, abusing the bankruptcy process and creditors in this case. For the court to indulge the Debtors and dismiss the case is to give the Debtors a "bonus" for having mislead creditors and the court with the promise to liquidate the property by September 2012. Fraud committed on the parties and the court is not rewarded.

Though Debtors counsel mounted a spirited and aggressive fight, he is betrayed by the actions, or lack of action by his clients.

The court is also not impressed by the plea that the Debtors are 80 year old people living on retirement pensions. At one point counsel's arguments bordered on contending that his clients were and are incompetent. That cannot be true as they have actively sought and obtained orders from this court, in response to the Trustee's Motion they advanced a modified plan to let them serve as Debtors in a Chapter Plan for 2 more years while the "actively" liquidated the Property, and they successfully prosecuted litigation against Christensen for violating the automatic stay. If the Debtors were not competent or capable of performing a plan which provided for liquidation of the Property, counsel would not have proposed, obtained confirmation of, or seek to have the Debtors fulfill duties under a modified plan for another two years.

Finally, conversion of the case is of little moment to the Debtors if their only concern is the exemption. They have a \$150,000.00 exemption they have claim in this property. Amended Schedule C, Dckt. 46. If they are correct and the Christensen claim is \$30,000, then the property would have to sell for in excess of \$200,000 for there to be any money in excess of the Christensen claim and

their homestead exemption. (Assumes a \$200,000 sales price, 8% seller costs of sale, and prorated real property taxes.) If it is true that the property has a value in excess of \$200,000, then it further highlights the Debtors bad faith in not proceeding with the required liquidation by September 2011.

09-35065, Civil Minutes, Dckt. 214.

### Review of Grounds Provided by Debtors

Even if the court were to consider the several different requests, it does not appear Debtor has provided sufficient grounds under Federal Rule of Civil Procedure 60(b).

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

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

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

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

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

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

Here, Debtor has not shown any of the grounds stated in Federal Rule of Civil Procedure 60(b), rather, they attempt to reargue the same facts and arguments that were stated at the prior hearing.

The court has reviewed what has transpired in the present Chapter 13 case (the Debtors' second attempt) to date. This case was filed on August 18, 2013. The proposed Chapter 13 Plan required payments of only \$100.00 a month for 36 months. Plan, Dckt. 5. The Plan provides for Debtors' counsel to be paid approximately \$5,000.00 (for time actually billed) for the services rendered in this \$100.00 a month, 36 month Chapter 13 case. From the monthly payments, the Plan cannot fund counsel's fees and the Chapter 13 Trustee's administrative expenses (even if computed at 6% to 8%).

The additional provisions of the Chapter 13 Plan provide that counsel shall be paid his legal fees from a retained paid to him by the Debtors' daughter. Further, that the Class 2 secured claim of Sacramento County and the Class 2 claim of the Christensens will be paid in full with a lump-sum payment by December 2013.

The Plan provides for a 100% dividend to creditors holding general unsecured claims (projected to be \$2,547.31). No Class 1 or Class 4 secured claims are provided for in the plan. In Class 3, the Debtors provide for the surrender of the 5851 34<sup>th</sup> Avenue Property.

The motions at issue were denied by another judge, this case having been inadvertently having been assigned to that judge notwithstanding the prior case having been assigned to the judge in Department E of this court. The first judge in this case transferred it to Department E, which is consistent with the policy of the court to have subsequent cases assigned to the judge having the first case to prevent the appearance of judge shopping. The order on the motion was signed by the present judge, based on the ruling of the prior judge.

#### **RULING**

Though grounds have not been shown to vacate the prior orders, it appears that the Motions should have been denied without prejudice. The grounds for denying the motions appears to have been based substantially on the findings of this court concerning the conduct of the Debtors in the prior case. The prior judge in this case correctly understood those rulings. However, it appears that the denials were summarily denied and may be based on a less than complete record presented by the Debtors. The court concludes that if this judge had been ruling on the substance of the motions, the denials would have been without prejudice. FN.2.

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FN.2. It also appears that the rationale for the prior rulings was based on that judge's conclusions that there can be no Chapter 20 bankruptcy cases (Chapter 7 followed by a Chapter 13, in which no discharge can be granted). First, this judge disagrees with that conclusions. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013). Secondly, it appears that while the prior judge correctly understood the less than stellar conduct of the Debtors in the prior case, the computation of time between the first bankruptcy case being filed, July 21, 2009 and the filing of the current case, August 19, 2013, is more than four years.

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The court shall issue an amended order correcting it to state that the denials of the Motion to Avoid Lien, PGM-1 is denied without prejudice. The balance of the Motion is denied. If the Debtors wish to seek confirmation of a Chapter 13 Plan, they may file an amended plan, motion to confirm, and supporting evidence.

**ADDITIONAL CHAPTER 13 ISSUES**

On the one hand the Debtors Plan states that creditors with general unsecured claims will be paid a 100%, and list less than \$3,000.00 in general unsecured claims. On the other-hand, the Debtors are seeking to avoid the lien of the Bartons, whose secured claim is \$140,000.00. No provision is made in the plan to address this claim. The Debtors appear to ignore the provisions of 11 U.S.C. § 502(h) which provides,

"(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition."

See COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 502.09, "The import, however, of section 502(h) is that regardless of the circumstances by which the trustee or the debtor recovers property under section 522, 550 or 553, the claim arising from the recovery will be allowed under section 502(a), (b), or (c) to the extent allowable unless disallowed under section 502(d) or (e) but with status as a prepetition claim existing at the time of the filing of the debtor's petition."

Here, the Debtors appear to pick the best from all worlds. They get their prior Chapter 13 case converted to Chapter 7 due to their misconduct. They file a new Chapter 13 case, providing a *di minimis* payment, premised on having obtained a discharge in the prior case. Then they seek to take away the lien of the Christensens, paying them nothing as an unsecured claim. The Debtors failure of good faith appears to be continuing in the present case.

However, it may well be that the Debtors just don't understand what they have to do in a Chapter 13 case and the impact of avoiding liens.

Further, they may not appreciate that a Plan which says that "money will magically appear in a couple months" does not a feasible plan state.

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

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

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

**IT IS ORDERED** that the Motion is granted as to the order denying the Motion to Avoid Lien, DCN: PGM-1, and the court shall issue an amended order stating that said motion is denied without prejudice.

**IT IS FURTHER ORDERED** that the balance of the motion is denied, with no further relief granted.

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

**AMENDED ORDER DENYING MOTION TO AVOID LIEN  
DCN:PGM-1 (Order, Dckt. 56)**

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

The Order Denying the Motion to Avoid Lien, DCN:PGM-1, having been filed on November 14, 2013, Dckt. 56, the Debtors having filed a Motion for Relief From said Order (Fed. R. Civ. P. 60(b)) or to Amend the Order (Fed. R. Civ. P. 59), Federal Rule of Bankruptcy Procedure 9024, 9023, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that this Amended Order Denying the Motion to Avoid the Lien of Barton and Paula Christensen replaces the prior order of the court, Dckt. 56, in its entirety.

**IT IS FURTHER ORDERED** that the Motion to Avoid Lien, DCN: PGM-1, is denied without prejudice.

19. [11-22922-E-13](#) VINCENT/COBI RUSH  
JMC-2 Joseph M. Canning

MOTION TO APPROVE LOAN  
MODIFICATION  
10-23-13 [[47](#)]

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, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

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

Bank of American Home Loans, whose claim the plan provides for in Class 4, has agreed to a loan modification with the following terms and conditions:

Years	Interest Rate	Monthly Principal and Interest Payment	Monthly Escrow Payment
1-5	2.000%	\$701.05	\$889.06 May adjust periodically
6	3.000%	\$761.85	May adjust periodically
7	4.000%	\$822.41	May adjust periodically
8-23	4.500%	\$852.07	May adjust periodically

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. FN.1.

FN.1. Counsel for the Debtors may need to go back and review the loan documents. He seeks to obtain approval of an agreement with an entity known as BAC Home Loans, aka Bank of America Home Loans. No such entity exists based upon the court's review of the FDIC list of federally insured financial institutions or the California Secretary of State website. While the banner at the time of the modification confirmation has the words "Bank of America," which is followed by the American flag symbol used in the Bank's ads, and then the words "Home Loans," there is nothing to indicate that the approval is from an entity named "Bank of America Home Loans." Further, the letter is signed by a Guadalupe Martinez, identified as with the "Home Loan Team" for "**Bank of America, N.A.**" [Emphasis added.]

The Loan Modification expressly states the following [emphasis added],

- A. "Thank you for working with **Bank of America, N.A.**...."
- B. "**Bank of America, N.A.** will draw on your account to pay your real estate taxes and insurance premiums as they come due."
- C. "[s]o the amount of your monthly payment that **Bank of America, N.A.** must place in escrow....."
- D. "**Bank of America, N.A.** may include alternative provisions to deal with an escrow shortage in accordance with applicable law."
- E. The Home Affordable Modification Agreement is to be returned, after recording to "**Bank of America, N.A.**"
- F. The lender in the Modification Agreement is identified as "**Bank of America, N.A.**"
- G. The signature block on the Loan Modification Agreement is for "**Bank of America, N.A.**"

Exhibit A, Dckt. 50.

The court does not venture a guess who or what BAC Home Loan aka Bank of America Home Loans may be or whether the present order is of any force and effect. Presumably counsel for the Debtors believes that he has identified the correct, legally existing, and competent entity for whom the court may grant relief. Counsel can decide whether he has obtained a sufficient order, or whether the Debtors and counsel need to lie awake at night wondering if the day will come when a different creditor comes forward and asserts that there is no order approving a loan modification and the Debtors are in default on the original obligation.

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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 Vincent Bernard Rush and Cobi Dawn Rush, Debtors, are authorized to amend the terms of their loan with Bank of America Home Loans, which is secured by the real property commonly known as 380 Deodara Street, Vacaville, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 50, in support of the Motion.

20. [13-31622-E-13](#) **TIMOTHY/VIKI HERNANDEZ** **MOTION TO CONFIRM PLAN**  
**SJD-2** **Susan Dodds** **10-4-13 [24]**

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 4, 2013. By the court's calculation, 68 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 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [10-41124](#)-E-13 RICHARD/CAROL GEORGE  
CAH-2 C. Anthony Hughes

**MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.  
11-25-13 [60]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 25, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6613 Demaret Drive, Sacramento, California. The Debtor seeks to value the property at a

fair market value of \$118,586.00 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 \$153,243.00. The Bank of New York Mellon Trust Company, N.A.'s second deed of trust secures a loan with a balance of approximately \$91,575.00. 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 The Bank of New York Mellon Trust Company, N.A. secured by a junior deed of trust recorded against the real property commonly known 6613 Demaret Drive, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$118,586.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

22. [10-46024-E-13](#) WILLIAM/NANCY SHERFEY MOTION TO VALUE COLLATERAL OF  
MOH-2 Michael O'Dowd Hays BANK OF AMERICA, NA  
11-26-13 [[52](#)]

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

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

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6298 Ponderosa Way, Magalia, California. The Debtor seeks to value the property at a fair market value of \$117,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$154,161.51. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$. 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 6298 Ponderosa Way, Magalia, 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 \$117,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

23. [09-27025-E-13](#) NILTON/MELISSA SAAVEDRA MOTION TO MODIFY PLAN  
BLG-9 Chad Johnson/Paul Bains 10-16-13 [[166](#)]

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 16, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [10-40028-E-13](#) ROBERT/PATRICIA TILLEY MOTION TO APPROVE LOAN  
 SDB-5 W. Scott de Bie MODIFICATION  
 10-23-13 [[109](#)]

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 23, 2013. By the court's calculation, 48 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 Home Mortgage, a division of Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification with the following terms and conditions:

Years	Interest Rate	Monthly Principal and Interest Payment	Monthly Escrow Payment
1-5	2.850%	\$1,000.39	\$322.92 May adjust periodically
6	3.850%	\$1,137.84	May adjust periodically
7-36	4.625%	\$1,247.87	May adjust periodically

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

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

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

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

**IT IS ORDERED** that Robert D. Tilley and Patricia J. Tilley, Debtors, are authorized to amend the terms of their loan with Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., Creditor, which is secured by the real property commonly known as 1018 Topsail Dr., Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 112, in support of the Motion.

25. [11-45130-E-13](#) SHARON ALDRED MOTION TO INCUR DEBT  
SJS-3 Scott J. Sagaria 11-19-13 [67]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

JPMorgan Chase Bank, N.A., which holds a deed of trust in the first position against the subject real property, has agreed to a loan modification with the Debtor. The loan modification will reduce the Debtor's monthly mortgage payment to \$528.24. The modification will capitalize the pre-petition arrears and provides for a modified interest rate of 5.000% over the next 30 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 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 Sharon Elaine Aldred, Debtor, is authorized to amend the terms of their loan with JPMorgan Chase Bank, N.A., Creditor, which is secured by the real property commonly known as 6557 Donegal Drive, Citrus Heights, California, and such other terms as stated in the Modification Agreement filed as Exhibit "B," Docket Entry No. 70, in support of the Motion.

26. [13-33030-E-13](#) RICHARD/LINDA TRUESDELL AMENDED MOTION TO EXTEND  
MMA-2 Mark Alonso AUTOMATIC STAY  
11-5-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 5, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Extend Automatic Stay 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 Extend Automatic Stay is granted.** No appearance required.

Richard and Linda Truesdell, the Chapter 13 Debtors, ("Debtors") commenced this bankruptcy case on October 4, 2013. On Thursday, October 24, 2013, the Debtors filed a Motion to Extend the Automatic Stay pursuant to 11 U.S.C. § 362(c)(3)(B). The Debtors sought an order shortening time to have a hearing conducted on October 29, 2013, three business days later.

However, the Motion failed to comply with Federal Rule of Bankruptcy Procedure 9013 which requires that the motion state with particularity the grounds upon which the requested relief is based. Instead, the motion merely instructed the court to read other pleadings and construct for the Debtors the grounds, which presumably the court finds favorable, upon which the Debtors' motion should be based. As motions get more complicated, a combined "Mothorities" becomes unworkable for the court, so this basic pleading rule is applied to all motions and other contested matters presented to the court.

The Debtors also provided a specific and detailed declaration in support of the Motion. Dckt. 19. However, the testimony was qualified by the Debtors stating that it is true only to "the best of our personal knowledge and belief." This could mean that the Debtors have personal knowledge and can truthfully testify, or "we don't have any real knowledge, but like what our lawyer has written so we'll testify to that so we can win."

Upon review of the Motion for Order Extending the Automatic Stay, the bankruptcy case having been filed on October 4, 2013; the Debtors filing the Motion to Extend the Stay on October 24, 2013; consideration of the declaration of the Debtors, and other pertinent documents, the court granted the motion on an interim basis and set a final hearing.

#### **SUPPLEMENTAL MOTION AND SUPPORTING DOCUMENTS**

On November 5, 2013, the Debtors filed an Amended Motion to Extend the Automatic Stay and supporting pleadings. The Motion now complies with Federal Rule of Bankruptcy Procedure 9013, as it states the grounds for the relief requested. Debtor's amended Declaration also complies with 28 U.S.C. § 1746.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond 30 days in this case. This is Debtors' second bankruptcy petition pending in the past year. Debtor's prior Chapter 13 bankruptcy case (No. 13-25551) was dismissed on May 13, 2013. See Order, Bankr. E.D. Cal. No. 13-25551-C-13C Dckt. 14, May 13, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

Here, Debtor Linda Truesdell provides testimony that she suffered from an illness shortly after commencing the prior bankruptcy case, and the necessary care and treatment impeded the Debtors in completing their schedules in the first bankruptcy case. The Debtors state they have filed the present bankruptcy case to propose a plan to cure the defaults on the debt secured by their home and restructure their finances in a way that they can retain that residence.

The Debtor has offered clear and convincing evidence to rebut the presumption of bad faith. Debtor has demonstrated a change in circumstances from the last filing, namely the Debtor's illness, that indicates to the court the Debtors can now be successful in completing a plan.

The motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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

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

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

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

27. [13-31632-E-13](#) JANELLE GILMORE MOTION TO CONFIRM PLAN  
PGM-1 Peter Macaluso 10-25-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 46 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 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.

28. [12-40834-E-13](#) DAVID/SHELLIE FISCHER MOTION TO MODIFY PLAN  
CA-5 Michael Croddy 10-17-13 [[82](#)]

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 17, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 17, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. [11-30435-E-13](#) **FREDERICK QUINN** **MOTION TO INCUR DEBT**  
**PGM-2** **Peter G. Macaluso** **11-12-13 [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 Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least

14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to continue the hearing on the Motion to Incur Debt to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion seeks permission to purchase a real property located at 1615 Alamo Place, West Sacramento, California, where debt will not exceed \$380,000.00. Debtor's payment will be no more than \$2,394.13 and at more than 4.00% interest. Debtor plans to get the down payment of \$56,051.97 from his 401K. Debtor states the purchase of the real property does not adversely affect creditors because it will not alter the plan payments or the other terms of the plan.

#### **OPPOSITION**

The Chapter 13 Trustee filed an opposition to the Motion to Incur Debt because Debtor does not explain an auto installment payment, rent from a sister and overtime income. Trustee states that the Debtor has not explained why they have no auto installment payment, when it was obtained, what vehicle it is for and how long it will exist. Trustee also argues that Debtor has not explained why they are receiving rent from a sister, for which property they are receiving rent and for how long they have been receiving and expect to receive rent. Lastly, Trustee states the Debtor has not explained when then began receiving overtime, when they began receiving overtime and how long they expect to receive overtime.

#### **REPLY**

Debtor requests two additional weeks to explain the objects raised by the Trustee.

#### **DISCUSSION**

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

Debtor does not address the reasonableness of incurring debt to purchase a new home while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor provide few sources of new income such as rent from a sister or income from overtime. However, there is inadequate

explanation for each of these sources. It is not clear when Debtor began to receive overtime and for how long they expect to receive the overtime. Similarly, it is not clear when Debtor started to receive rent from a sister and for how long it will be receiving the rent.

However, the court will allow a brief continuance to allow Debtor to provide an explanation for the changes. The hearing on the motion is continued.

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

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

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

**IT IS ORDERED** that the hearing on the Motion is continued to **xx:xx x.m. on \_\_\_\_\_, 201x.**

30. [13-34336-E-13](#) SERGEY/ZINOVIYA SHEMYAKIN MOTION TO VALUE COLLATERAL OF  
CAH-1 C. Anthony Hughes BANK OF AMERICA, N.A.  
11-21-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 21, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4441 Mitchum Court, Antelope, California. The Debtor seeks to value the property at a fair market value of \$175,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$188,100.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$134,934.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a junior deed of trust recorded against the real property commonly known as 4441 Mitchum Court, Antelope, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$175,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [10-28340-E-13](#) SHELBY/ANICETA HALEY MOTION TO MODIFY PLAN  
BLG-4 Chad Johnson/Paul Bains 10-24-13 [[54](#)]

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 24, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

**The court's tentative decision is to 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 Section 6 of the Debtors' modified plan indicates that as of October 22,

2013, Debtor has paid a total of \$21,566.00 into their plan, but has actually paid \$22,618.00. The Trustee states the plan terms also state that the Trustee has a balance on hand of \$0.00 but he actually had a balance on hand of \$1,052.00. Lastly, the Trustee states that the plan proposes \$0.00 in plan payments for months 42-45, when the Debtor has made payments for those months. Trustee states the Debtor is current under the confirmed plan.

The Trustee states that with these corrections, he has no objection to confirmation.

The modified Plan, as amended to state the correct amount paid to the Trustee, complies with 11 U.S.C. §§ 1329, 1322 and 1325(a) and is not confirmed, with the above stated changes being made in the order confirming.

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 24, 2013, as amended to stated the \$22,618.00 previously paid to the Trustee under the prior confirmed Plan, 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.

32. [11-20540-E-13](#) SCOTT STORER MOTION TO INCUR DEBT  
CYB-2 Candace Y. Brooks 11-19-13 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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, 21 days' notice was provided. 14 days' notice is required.

**Tentative 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)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will

set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Merrill Lynch Wealth Management, a subsidiary of Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$2,958.17 to \$1,853.12. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.680%. The loan does not include real property taxes or home owner's insurance of approximately \$484.86 per month, collectively. Debtor states that the total monthly expenses associated with the mortgage will decrease by \$620.19 and Debtor plans on filing a modified plan.

The Chapter 13 Trustee filed a statement of non-opposition.

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

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

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

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

**IT IS ORDERED** that Scott Storer, Debtor, is authorized to amend the terms of his loan with Merrill Lynch Wealth Management, a subsidiary of Bank of America, N.A., which is secured by the real property commonly known as 4190 Emerald Lane, Placerville, California, and such other terms as stated in the Modification Agreement filed as Exhibit "C," Docket Entry No. 34, in support of the Motion.

33. [12-20140-E-13](#) GARY STEPHENS  
BLG-1 Chad M. Johnson

MOTION TO APPROVE LOAN  
MODIFICATION  
11-5-13 [[24](#)]

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, and Office of the United States Trustee on November 5, 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.

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,580.86. The modification will capitalize the pre-petition arrears and provides for interest rate from 5.500% over the next 292 months.

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 Gary M. Stephens, Debtor, is authorized to amend the terms of his loan with Bank of America, N.A., which is secured by the real property

commonly known as 1377 Meadow Crest Dr., South Lake Tahoe, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 27, in support of the Motion.

34. [12-20042-E-13](#) JOHN/TERESA HIXSON MOTION TO MODIFY PLAN  
WW-4 Mark Wolff 10-16-13 [[57](#)]

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 16, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [08-32644-E-13](#) MARIANO/TAMARA MORGADO MOTION TO VALUE COLLATERAL OF  
SDB-4 Scott de Bie VERIPRO SOLUTIONS, INC.  
11-8-13 [[88](#)]

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 8, 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 837 Brookwood Ave., Vallejo, California. The Debtor seeks to value the property at a fair market value of \$195,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$317,102.00. Creditor Veripro Solutions, INC.'s second deed of trust secures a loan with a balance of approximately \$54,535.70. 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 Veripro Solutions, INC. secured by a second deed of trust recorded against the real property commonly known as 837 Brookwood Ave., 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 \$195,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

36. [12-36944-E-13](#) EDA URRIZA  
PLC-7 Peter L. Cianchetta

OBJECTION TO NOTICE OF MORTGAGE  
PAYMENT CHANGE  
10-16-13 [[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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Objection to Notice of Mortgage Payment Change 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 overrule without prejudice the Objection to Notice of Mortgage Payment Change.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor objects to the Notice of Mortgage Payment Change filed by U.S. Bank, N.A, as Trustee successor in interest to Bank of America, N.A., as Trustee (successor by Merger to LaSalle Bank, N.A.) As Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX, by their servicer America's Servicing Company. Debtor argues that the Proof of Claim No. 9 filed by the Bank listed a shortage of \$144.67 as of the petition date but the escrow analysis supporting the claim stated that the amount of the escrow balance was positive in the amount of \$1,716.51. The Debtor states these documents submitted are inconsistent and unsupported.

Debtor also argues that the Notice of Payment Change filed June 5, 2013 is inconsistent with the Proof of Claim and Escrow analysis. The Notice of Payment Change of June 5, 2013, states the escrow payment has changed from \$282.22 to \$688.02. The Notice states the starting balance on October 2012 was a shortage of \$1,123.91. Debtor states this is inconsistent with the Proof of Claim. Debtor also requests attorney fees.

Debtor provides his Declaration as evidence, stating he has reviewed the various documents and believes that the documents filed by U.S. Bank, N.A. are inaccurate.

The Notice of Mortgage Payment Change states that there has been an escrow account payment adjustment and the current escrow payment of \$258.22 is being increased to \$688.02.

However, the Motion and supporting pleadings have not been properly served on U.S. Bank, N.A., a federally insured depository institution and respondent creditor in this motion. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Americas Servicing Company, the servicing agent of U.S. Bank, N.A., but neglected to serve any of the addresses by certified mail to an officer to U.S. Bank, N.A. as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

Therefore, the court cannot enter the requested relief without proper service on the parties.

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 Notice of Mortgage Payment Change filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to the Notice of Mortgage Payment Change is overruled without prejudice.

37. [13-27044-E-13](#) KEVIN/BREE SEARS  
DBJ-2 Douglas Jacobs

MOTION TO CONFIRM PLAN  
10-21-13 [[57](#)]

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 21, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Creditor Cory Adams objects to confirmation of the Debtors' Second Amended Plan on the basis of good faith. Creditor states that Debtors' income has increased and the Debtors' expenses have decreased to an amount exactly equal to their proposed plan payment under the plan which pays zero to the general unsecured claims. Creditor states his claim is a general unsecured claim, totaling nearly one-half of the entire amount of unsecured debt. Creditor states he has filed an adversary proceeding to determine that the amounts owed to him are non-dischargeable.

Debtor responds, stating that they filed an amended plan to account for all of the taxes due and allowing for the payment to their mortgage company for ongoing mortgage and all the arrears. In order to make these payments, Debtors state they reduced their monthly food bill, plan on bringing lunch to work, reduce eating out expenses and buying less expensive food. Debtor states that being faced with larger mortgage arrears and tax obligations, he has taken on more work as a public defender and private defense attorney to supplement his income. Debtor states the plan is feasible. Debtor also states that the adversary complaint referenced by Creditor is being litigated and if Creditor is successful, the plan will be modified or the case will be dismissed.

Based on the declaration providing explanations for the change in income and expenses, the court overrules the Creditor's objections. Merely because a debtor dials down otherwise realistic expenses to a lower

"battlefield" level which are necessary to make a plan work does not render the expenses not being stated in good faith. Though the court has no idea why the Debtors are filing amended Schedules I and J, Dckt. 63, for post-petition changes in income and expenses, the court will not deny confirmation on those grounds. (Though it could be argued that the Debtors misstating under penalty of perjury post-petition income and expenses as being the income and expenses as of the commencement of this case renders all of the Debtors' testimony unreliable - this Creditor and the Debtor have a bigger fight over the dischargeability of the claim.)

The adversary proceeding appears to be litigating the non-dischargeability of the Creditor's claim and if Creditor is successful, his claim will survive the bankruptcy plan and discharge.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 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 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. [09-34545-E-13](#) ERIC REESE  
EJS-3 Eric Schwab

MOTION TO MODIFY PLAN  
10-16-13 [[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 October 16, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. [13-33645](#)-E-13 DEBRA CURTIS  
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
11-10-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 10, 2013. By the court's calculation, 30 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 1219 Humphrey Drive, Suisun, California. The Debtor seeks to value the property at a fair market value of \$177,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$233,061.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$61,947.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 1219 Humphrey Drive, Suisun, 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 \$177,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

40. [12-20846](#)-E-13 SALVADOR/AUDRA ACOSTA MOTION TO MODIFY PLAN  
GFG-88 Keith Wood 10-17-13 [[60](#)]

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 17, 2013. By the court's calculation, 54 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 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 Motion to Confirm the Modified Plan is denied as moot.** No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a modified Plan on November 20, 2013. Dckt. 81. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The motion is denied 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 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 as moot and the plan is not confirmed.

41. [10-48648-E-13](#) **LENOR NUNEZ** **MOTION TO VALUE COLLATERAL OF**  
**PLC-5** **Peter L. Cianchetta** **JPMORGAN CHASE BANK NA**  
**11-4-13 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 4, 2013. By the court's calculation, 36 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 8140 Visalia Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$96,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$160,729.62. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$52,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220

(9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8140 Visalia Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$96,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

42. [11-48248-E-13](#) RICKY/TANNIA PEREZ  
RCO-1

MOTION TO APPROVE LOAN  
MODIFICATION AND/OR MOTION FOR  
CONSENT TO ENTER INTO LOAN  
MODIFICATION AGREEMENT  
10-31-13 [[43](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 31, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Tentative 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).

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

#### PROCEDURAL ISSUES

##### Notice

The Notice of Hearing does not state whether written opposition is required. Local Bankruptcy Rule 9014-1(d)(3) requires that the notice of hearing state whether and when written opposition must be filed as well as the deadline for filing and serving it. The notice does not advise potential respondents that a failure to file a timely written opposition may result in the motion being resolved without oral argument and untimely written opposition will be stricken. Defective service is grounds for denial of the motion.

##### Evidence In Support

The moving party filed the notice, motion, declaration, 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).

#### **MOTION**

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,027.49, including the escrow payment. The modification will capitalize the pre-petition arrears and provides for interest rate of 4.375% until maturity in September 1, 2043.

#### **TRUSTEE'S OPPOSITION**

The Trustee states he is not opposed to the terms of the loan modification but believes certain matters should be addressed to provide relief.

Trustee argues that the Creditor may not have standing to obtain relief unless Debtor either joins in the motion or files a separate declaration in support of the motion. Trustee states 11 U.S.C. § 364 grants standing in a Chapter 13 only to the Debtor. Trustee also states that the documents filed by the Creditor were not filed separately.

#### **DEBTOR'S JOINDER**

Debtor filed a "Joinder in Motion for Order Approving a Loan Modification" stating that Debtors support and join Creditor's motion, as the modification will reduce their ongoing mortgage payments and allow them to continue to retain their home and afford the plan payments. Dckt. 49.

After the Debtor filed supporting documents, 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.

#### **IMPOSITION OF CORRECTIVE SANCTIONS**

Counsel for Bank of America, N.A., RCO Legal, P.S., appears regularly in this court and is familiar not only with the even and fair application of Federal Rule of Bankruptcy Procedure 7(b), Federal Rule of Bankruptcy Procedure 9013, Local Bankruptcy Rule 9004-1, and the Revised Guidelines for Preparation of Documents. Counsel clearly knows that dumping on the court an omnibus electronic document in which the motion, points and authorities, declarations, and exhibits is not proper. These pleadings are signed by an attorney who personally regularly appears, so it does not appear that "we had a new associate who has never appeared in the Eastern District before" excuse cannot be floated.

The court cannot, and will not, allow counsel and her law firm to place themselves above the rules with which all other attorneys must comply. Commonly, the court would deny the motion without prejudice and require it to be refiled. However, in this situation such would put the Debtors through otherwise unnecessary anguish and emotional distress over whether

the attorneys and Bank would reject the modification just to "show the judge who is boss."

The court orders that RCO Legal, P.S. pay to the Clerk of the Bankruptcy Court, for deposit in the United States Treasury \$250.00 in corrective sanctions. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others in a similar situation.

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

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

In light of having knowledge of the Rules, it appears that counsel, her firm, and the Bank need to have their conduct corrected.

If counsel believes that the \$250.00 is not a proper corrective sanction amount or that such corrective sanctions are unwarranted, the court will establish a procedure to address the issue. The court will, to create a clear record, issue an Order to Show Cause, requiring counsel and Bank of America, N.A. to each respond to why the Bank and its counsel are filing motions and supporting pleadings which do not comply with the basic pleading requirements and why such Rules do not apply to the Bank and counsel.

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

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

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

**IT IS ORDERED** that Ricky Andres Anthony Perez and Tannia Marie Perez, Debtors are authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 401 Elder Street, Vacaville, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 43, in support of the Motion.

**IT IS FURTHER ORDERED** that RCO Legal, P.S. shall pay \$250.00 in corrective sanctions to the Clerk of the United States Bankruptcy Court for the Eastern District of California, to be deposited in to the United States Treasury, on or before December 30, 2013. Further, on or before January 5, 2014, RCO Legal, P.S. shall file a certificate of payment, under penalty of perjury, attesting to the timely payment of the sanctions.

43. [13-33049](#)-E-13 **JEANNE CHRISTENSON** **OBJECTION TO CONFIRMATION OF**  
AMC-1 **John A. Tosney** **PLAN BY CENTRAL MORTGAGE**  
**COMPANY**  
11-13-13 [[30](#)]

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on November 11, 2013. The filing of a new plan is a *de facto*

withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

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

44. [13-33049](#)-E-13 JEANNE CHRISTENSON **OBJECTION TO CONFIRMATION OF**  
NLE-1 John A. Tosney **PLAN BY DAVID CUSICK**  
**11-12-13 [20]**

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 12, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

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

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

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and

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

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

45. [09-48550-E-13](#) STEVE/KRISTINA MONTOYA MOTION TO MODIFY PLAN  
WW-2 Mark Wolff 11-5-13 [[75](#)]

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, 35 days' notice was provided. 35 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 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 the Debtors' proposed modified plan does not include page 4, and the Trustee is therefore unable to determine the treatment of any Class 3, 4, 5, or 6 creditors or the percentage proposed to unsecured creditors.

Trustee also states that the Debtors' proposed modified plan provides for Hyundai Motor Finance in Class 2 as a claim reduced based on a value of collateral, when no motion has been filed.

The Trustee argues he is unable to comply with the plan as proposed. Section 6.02 of Debtors' modified plan proposed payment in full on or before October 25, 2013 to HSBC Auto Finance with Debtors' lump sum payment of \$2,785.60, but this motion and modified plan were not filed until November 5, 2013 and the hearing is no until December 10, 2013. The Trustee states he is holding the lump sum and will issue the check to HSBC once the modified plan is approved.

Based on a review of the modified plan, with page 4 missing, the court is also unable to determine whether the plan is feasible. Therefore, the motion is denied.

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.

46. [10-47350-E-13](#) JOHN/JENNIFER GONZALES MOTION TO MODIFY PLAN  
WW-4 Mark A. Wolff 10-18-13 [[48](#)]  
CASE DISMISSED 11/23/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 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 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 \$1,300.00 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 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.

47. [11-23451-E-13](#) CLARENCE ISADORE AND MOTION TO MODIFY PLAN

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 18, 2013. By the court's calculation, 61 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 continue the hearing on the Motion to Confirm the Modified Plan to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee objects to the proposed plan on several grounds.

First, the Trustee states that the modified plan may not be proposed in good faith or be Debtors' best effort. The Trustee requested and received six months of bank statements, pay advices and two years of tax returns. The Trustee has found issues after reviewing the documents. Trustee states that the confirmed and modified plan provide for the Timeshare in Class 4 and state the payment is being made by their daughter. However, the Trustee states the bank statements show that the timeshare payments are being made directly from Debtor's checking account. The Trustee also states he is perplexed by numerous deposits above the Debtor's regular employment income as well as large withdrawals. Trustee states on example is \$22,000 deposited on May 20, a \$15,782.19 withdrawal on June 7. Trustee states these deposits and withdrawals are not explained.

Trustee also notes that the income for Debtor Deatra Jones-Isadore appears to be understated. Schedule I indicates her net monthly take home pay as a teacher is \$2,108.03; however, the Trustee states the payroll advice reflects a year to date income of \$31,189.00, which would average to \$3,118.90 per month when divided by 10 months.

Trustee also states after a review of the Debtor's tax returns, Schedule D, Capital Gains and Losses (C-2 and 3), of Debtor's 2011 tax return reflects Debtor purchased US Treasury Notes on January 27, 2009 for \$14,984.00 and sold on April 1, 2011 for \$15,731.00. This was not reported on Debtor's Schedule B filed at the time Debtor's bankruptcy case was filed.

Schedule B, Interest and Ordinary Dividends, of Debtor's 2011 tax return reflects interest income of \$1,850.00 in 2011 which Debtor did not report on Schedule I. The Trustee is uncertain what these investments are, how Debtor was able to obtain them, and what happened to the income from them.

Second, the Trustee states he is unable to determine the plan payment proposed. Section 1.01 of Debtor's modified plan proposes a plan payment of \$89,734.15 through October, 2013, then \$1,200.00 for 28 months beginning November, 2013. Debtor's Motion indicates Debtors are proposing a \$1,200.00 plan payment beginning November, 2013. However, Debtor's Declaration indicates Debtor will begin remitting plan payments of \$200.00 per month beginning October 25, 2013. Debtor has submitted a November payment to the Trustee in the amount of \$200.00 which posted on November 5, 2013. Debtor's Amended Schedules I and J filed as Exhibits support a monthly payment of \$1,200.26.

Third, the Trustee is uncertain whether Debtor's modified plan intends for the Trustee to disburse the October mortgage payment to JPMorgan Chase. Section 1.01 of the modified plan proposes plan payments of \$89,734.15 through the month of October, which includes Debtor's October plan payment under the confirmed plan of \$2,804.35. Debtor's modified plan, however, only authorizes ongoing mortgage payments to JP Morgan Chase through September of \$59,020.35. Debtor is currently involved in a trial loan modification which began November 1, 2013.

Fourth, Debtor's modified plan proposes to reclassify JPMorgan Chase regarding the ongoing mortgage and pre-petition arrears from a Class 1 secured creditor to Class 4 secured claim paid directly by the Debtor based on a trial loan modification. Debtor's filed a Motion for Order Approving Trial Loan Modification on October 18, 2013, which was subsequently granted on November 19, 2013. Dckt. 45. Trustee argues that Debtor's modified plan provides no provision should the modified plan be granted and then the Debtor is unsuccessful in obtaining a permanent loan modification.

Fifth, Debtor's Declaration fails to adequately explain the numerous changes regarding their individual expenses. Trustee states Debtor provides no explanation for multiple increases in expenses, including food, laundry/dry cleaning, medical/dental, recreation, charitable contributions, property taxes/rentals, personal care and contributions as principle to school programs.

#### **DEBTOR'S REPLY**

Debtor filed a reply, stating that de to the holiday, Counsel has not been able to meet with the Debtors in time to supplement the record. Debtor request additional time to completely and thoroughly respond to the Trustee's objections.

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 hearing on the Motion to Confirm the Plan is continued to **xx:xx x.m. on \_\_\_\_\_, 201x.**

48. [11-28151](#)-E-13 JODY/SALLY MCCURRY MOTION TO VALUE COLLATERAL OF  
JT-3 John A. Tosney JPMORGAN CHASE BANK, N.A.  
11-8-13 [[69](#)]

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 8, 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 Appraiser's declaration. The Debtor is the owner of the subject real property commonly known as 7875 Washington Street, Sutter, California. The Debtor seeks to value the property at a fair market value of \$192,000.00 as of the petition filing date. A declaration and an Appraisal by an Appraiser is provided as evidence of the property value.

The first deed of trust secures a loan with a balance of approximately \$199,743.00. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$110,100.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11

U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 7875 Washington Street, Sutter, 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 \$192,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

49. [13-27151-E-13](#) FRANK TERRAZAS  
SJJ-4 Stephen Johnson

MOTION TO CONFIRM PLAN  
10-16-13 [[64](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 55 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 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

50. [13-29251](#)-E-13 DAMION BOATMAN  
SS-3 Scott Shumaker

MOTION TO CONFIRM PLAN  
10-24-13 [[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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

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

#### **TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee opposes the motion on the basis that the plan does not authorize prior distributions made under the terms of the Debtor's prior plan.

The Trustee also argues that the Debtor is proposing to pay in Class 2 a 2011 Toyota Camry at 19.95% interest in the amount of \$479.86 per month.

The Trustee states that the Debtor appears to be in default to these claims as no payments were made to these creditors as listed on the Statement of Financial Affairs and the Debtor is paying the creditor an interest in excess of that required by law. See *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). With respect to the interest rate, in *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

Lastly, the Trustee states the Debtors declaration is insufficient to support the motion to confirm, as it fails to provide sufficient evidence. Further, Debtors have failed to meet their burden of proving the requirements of confirmation. See *Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence, typically in the form of a Debtors' Declaration proving the elements of 11 U.S.C. §1325(a), is required. See Local Bankr. R. 9014-1(d)(6).

#### **INTERNAL REVENUE SERVICE'S OPPOSITION**

The Internal Revenue Service objects to the proposed plan on the basis that Debtor has not filed his 2011 income tax return. This is a renewed objection from the prior objection to confirmation. The Internal Revenue Service argued that the failure to file his 2011 tax return is a violation of 11 U.S.C. § 1308(a) and 1325(a)(9). The Internal Revenue Service states that Debtor should not be allowed to benefit from one portion of federal law, the Bankruptcy Code, while ignoring other duties under federal law, the Internal Revenue Code.

Based on the foregoing, 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.

51. [13-29351](#)-E-13 SHELBY SCANLAN  
NF-1 Nikki Farris

CONTINUED MOTION TO VALUE  
COLLATERAL OF DOUGLAS T.  
SHIELDS AND HORTON ENTERPRISES,  
INC.  
8-20-13 [[18](#)]

CONT. FROM 10-8-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Douglas T. Shields and Horton Enterprises, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 49 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). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The court's decision is to deny the Motion as moot.** No appearance required.

#### PRIOR HEARING

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1480 Oak Ridge Drive, Chico, California. The Debtor seeks to value the property at a fair market value of \$216,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The asserted value is also based on an appraisal completed by Laurie Adams of Adams Appraisal Company.

#### CREDITOR'S OPPOSITION

The Creditor Douglas T. Shields opposed the Debtor's Motion to Value Collateral. The Creditor seeks to value the real property commonly known as 1480 Oak Ridge Dr., Chico, California, at \$245,000 to \$270,000 based on the Creditor's independent appraisal from a licensed California realtor familiar with the residential real estate market in Chico, California.

#### CONTINUANCE

The court continued the hearing to afford the parties to complete discovery, exchange appraisal reports, and engage in substantive settlement discussions.

However, on December 3, 2013, the case was converted to one under Chapter 7. Dckt. 42. Therefore, the Motion to Value is denied as moot.

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

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

The Motion Value Collateral filed by the Debtor having been presented to the court, the case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied as moot.

52. [13-33751](#)-E-13 SHEREE SOLOMON MOTION TO VALUE COLLATERAL OF  
MS-1 Mark Shmorgon TOYOTA MOTOR CREDIT CORPORATION  
10-25-13 [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 Debtor Sheree Solomon, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 46 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 \$13,777.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2011 Toyota Prius Three Hatchback 4D. The Debtor seeks to value the property at a replacement value of \$13,777.00 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 February 2011, more than 910 days prior to filing of the petition, with a balance of approximately \$18,155.04. 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 \$13,777.00. 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 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 Toyota Motor Credit Corporation secured by an asset described as 2011 Toyota Prius Three Hatchback 4D is determined to be a secured claim in the amount of \$13,777.00, 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 \$13,777.00 and is encumbered by liens securing claims which exceed the value of the asset.

53. [10-45652-E-13](#) MARIO/RAFAELA GONZALEZ MOTION TO MODIFY PLAN  
PGM-6 Peter Macaluso 10-17-13 [[155](#)]

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 17, 2013. By the court's calculation, 54 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 continue the Motion to Confirm the Modified Plan to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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 if Debtors' current statement of income is accurate. The debtors' income has not changed from the statement of income filed 11-1-10 but the ages of the dependants has changed. The Trustee states the only change is that Debtor lists unemployment for 1 month but the declaration does not address if the Debtor is eligible or applied for unemployment benefits. Trustee states the Debtor has not provided current paystubs to support the income reported.

The Trustee also states he is uncertain of which vehicle the Debtors are proposing to surrender. Under the confirmed plan, the Debtors list in class 2 table, section 2.09 (d) Creditor Patelco Credit Union with secured purchase money security interest for 1996 Dodge Ram. The Debtors are now proposing to reclassify creditor to class 3 surrender. According to the Trustee's records, on 1-27-11 the creditor filed a proof of claim (#16) for 2005 Dodge 1500.

#### **DEBTORS' RESPONSE**

Debtors respond stating that they have completed a new official form 6I and 6J and filed them as Exhibits, Dckt. 165, to provide the Trustee with the missing information. Debtors suggest continuing the hearing to allow the Trustee to review the updated income and expenses provided.

The Debtors also state that the plan incorrectly listed the collateral of Creditor Patelco Credit Union as the 1996 Dodge Ram, when it is a 2005 Dodge 1500 Ram, which the Debtors are proposing to surrender. The Debtor states this change can be made in the order confirming.

Based on the new information provided to the Trustee recently, the court will continue the hearing to allow him to review the requested information.

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 hearing on the Motion to Confirm the Plan is continued to ~~xx:xx~~ x.m. on \_\_\_\_\_, **201x**.

54. [13-32453](#)-E-13 KIM HALILOVIC  
JT-1 John Tosney

CONTINUED MOTION TO VALUE  
COLLATERAL OF UNITED GUARANTY  
RESIDENTIAL INSURANCE COMPANY  
OF NORTH CAROLINA  
10-3-13 [[14](#)]

CONT. FROM 11-5-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 3, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

#### **PRIOR HEARING**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 300 Fayette Way, Folsom, California. The Debtor seeks to value the property at a fair market value of \$419,000.00 as of the petition filing date. Debtor offers the Declaration of James Chausee, a licensed real estate appraiser with 39 years' experience, who opines that the value of the property is \$419,000.00. The Debtor provided an appraisal as the evidence of the property value.

#### **Opposition**

Creditor United Guaranty Residential Insurance Company of North Carolina ("Creditor") filed opposition to the Motion. The Creditor asserts that based on a valuation from Zillow.com obtained on October 24, 2013, the subject real property may be more than the amount alleged in the motion. The Creditor further states that due to the relatively short period between their receipt of notice of the Motion and the deadline to file an opposition to the Motion, the Creditor was unable to obtain an appraisal of the property in time to include an appraisal with this opposition. Creditor is in the process of obtaining an expert appraisal of the property. Further, Creditor argues the Motion includes an appraisal, but does not provide a declaration authenticating the appraisal.

**CONTINUANCE**

Based on the opposition filed by Creditor, the Court continued the hearing on the Motion for the Creditor to obtain an appraisal and confer with Debtor.

**CREDITOR'S APPRAISAL**

On December 4, 2013, objecting Creditor filed a Declaration of Appraiser Richard West in support of Opposition to Motion to Value Collateral. Richard West, a licensed real estate appraiser with 24 years' experience, opines that the value of the property is \$475,000.00.

Based on the material disputed fact of the value of the subject real property, the court sets the hearing for an evidentiary hearing.

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

- (1) Testimony and exhibits shall be presented to the court pursuant to Local Rule 9017-1. Presentation of witnesses at the hearing is required.
- (2) Debtors shall lodge with the court and serve their direct testimony statements and exhibits on or before -----.
- (3) United Guaranty Residential Insurance Company of North Carolina shall lodge with the court and serve their direct testimony statement on or before -----.
- (4) Evidentiary objections and confirmation hearing briefs shall be filed and served on or before -----.
- (5) Oppositions to evidentiary objections shall be filed and served on or before -----.
- (6) The Evidentiary Confirmation Hearing shall be conducted at -----.

55. [13-32453](#)-E-13 KIM HALILOVIC  
PPR-1 John Tosney

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY UNITED  
GUARANTY RESIDENTIAL INSURANCE  
COMPANY OF NORTH CAROLINA  
10-31-13 [[31](#)]

CONT. FROM 11-19-13

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, Debtor's Attorney and Chapter 13 Trustee on October 31, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to continue the hearing on the Objection to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

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

The court having set the Motion to Value for an evidentiary hearing, the hearing on the Objection to Confirmation is continued.

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

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

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

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

56. [13-32453-E-13](#) KIM HALILOVIC  
TSB-1 John Tosney

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

CONT. FROM 11-19-13

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 30, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to continue the hearing on the Objection to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

The court continued the hearing on the Objection, based on the pending Motion to Value Collateral. The court having set the Motion to Value for an evidentiary hearing, the hearing on the Objection is continued.

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

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

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

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

57. [13-33853](#)-E-13    **KENNETH HOUPPT AND JOAN**                    **MOTION TO VALUE COLLATERAL OF**  
SAC-1                    **BARBEE**    **BANK OF AMERICA, N.A.**  
                                 **Scott A. CoBen**    **10-29-13 [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, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5300 Roquero Cerro Court, Greenwood, California. The Debtor seeks to value the property at a fair market value of \$190,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$201,000.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$93,600.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 5300 Roquero Cerro Court, Greenwood, 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 \$190,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

58. [13-34553-E-13](#) MARCUS/HEIDI MATHAT  
SJS-1 Scott J. Sagaria

MOTION TO EXTEND AUTOMATIC STAY  
11-15-13 [[10](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2013. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Extend Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Debtors seek to extend the automatic stay in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior Chapter 13 bankruptcy case (No. 12-34441-B-13J) was dismissed on February 25, 2013 for failure to file a plan. See Order, Bankr. E.D. Cal. No. 12-34441-B-13J, Dckt. 65, February 25, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

#### DISCUSSION

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer* -

*Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

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

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

Here, Debtors allege the prior case was dismissed for failure to confirm a Chapter 13 Plan. Debtors state that the circumstances causing the prior plan have been circumvented by filing a Chapter 13 Plan based upon the proof of claims filed in the former case. The court notes that a Chapter 13 plan has been filed, as well a motion to value collateral.

The Debtor has offered clear and convincing evidence to rebut the presumption of bad faith. Debtor has demonstrated a change in circumstances from the last filing that indicates to the court the Debtors will be successful in completing a plan.

The motion is granted.

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

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

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

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

59. [13-33154-E-13](#) PHILLIP/STEPHANIE BURNS MOTION TO VALUE COLLATERAL OF  
SAC-1 Scott A. CoBen BANK OF AMERICA, N.A.  
10-31-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 31, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1392 Amaranth Street, Plumas Lake, California. The Debtor seeks to value the property at a fair market value of \$182,985.00 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 \$241,989.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$60,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1392 Amaranth Street, Plumas Lake, 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 \$182,985.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

60. 10-30558-E-13 SERGIO CALVILLO MOTION TO MODIFY PLAN  
JT-2 John Tosney 10-17-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 17, 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.

61. [10-23160](#)-E-13 ERIN/KELLY WILSON MOTION TO DETERMINE FINAL CURE  
LC-6 Lorraine W. Crozier AND MORTGAGE DEFAULT  
11-6-13 [[78](#)]

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 6, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion for Order Confirming Final Cure of Mortgage Default is granted.**  
No appearance required.

Debtors seek an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the

plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1. Debtors assert their plan called for 42 monthly payments to the Trustee sufficient to cure a pre-petition delinquency of \$28,343.41 and to maintain the required mortgage payments due to GMAC Mortgage, LLC. Debtors state they have made all payments required by their plan and completed payments on August 25, 2013. On September 10, 2013, the Trustee filed and served a Notice of Final Cure confirming that Debtors had made all payments necessary to cure the pre-petition delinquency. Debtor asserts that Federal Rule of Bankruptcy Procedure 3002.1(g) requires GMAC Mortgage, LLC to file a statement as to whether it agreed that the prepetition arrearage was cured and whether debtors are otherwise current on payments 21 days after service of the Trustee's Notice of Final Cure.

On September 30, 2013, Deutsche Bank National Trust Company, as Trustee for RALI 2003QS4 c/o GMAC Mortgage, LLC served a Statement Pursuant to FRBP 3002.1(g) confirming that the claimant had received the full amount needed to cure its claim for pre-petition arrears. This statements also states that Debtors made sufficient ongoing mortgage payments as of August 2013, all payment required under the plan, but have since become delinquent as of September 2013.

Debtors acknowledge that the September 2013 payment has not been made but that the Trustee's Notice of Final Cure is correct as to all payments due under the plan.

The Chapter 13 Trustee filed a non-opposition to the Motion.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts. Here, Creditor filed a Response to Notice of Final Cure Payment within 21 days after the service of the notice as required by Federal Rule of Bankruptcy Procedure 3002.1(g). A review of the Notice of Final Cure Payment indicates that debtors have made all payments under the plan for arrears to GMAC Mortgage, LLC. Dckt. 67. A review of the Response filed by GMAC Mortgage, LLC shows that it agrees Debtor has paid in full the amount required to cure the default on Creditor's claim but that Debtor missed the payment in September 2013. Therefore, the court finds Erin Costello Wilson and Kelly Martin Wilson, Debtors, have cured the mortgage default to GMAC Mortgage, LLC, as required by the Chapter 13 Plan. The court does not make any findings as to whether the Debtors are current with mortgage payments outside of the plan terms.

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

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

The Motion for Order Confirming Final Cure of Mortgage Default 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 Erin Costello Wilson and Kelly Martin Wilson, Debtors, have cured the mortgage default to GMAC Mortgage, LLC, as required by the Chapter 13 Plan. The court does not make any findings as to whether the Debtors are current with mortgage payments outside of the plan terms.

62. [10-23160-E-13](#) ERIN/KELLY WILSON MOTION TO DETERMINE FINAL CURE  
LC-7 Lorraine W. Crozier AND MORTGAGE DEFAULT  
11-6-13 [[86](#)]

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 6, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion for Order Confirming Final Cure of Mortgage Default is granted.**  
No appearance required.

Debtors seek an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1. Debtors assert their plan called for 42 monthly payments to the Trustee sufficient to cure a pre-petition delinquency of \$9,661.52 and to maintain the required mortgage payments due to Green Tree Servicing, LLC. Debtors state they have made all payments required by their plan and completed payments on August 25, 2013. On September 10, 2013, the Trustee filed and served a Notice of Final Cure confirming that Debtors had made all payments necessary to cure the pre-petition delinquency. Debtor asserts that Green Tree Servicing, LLC did not comply with Federal Rule of Bankruptcy Procedure 3002.1(g) and failed to file a statement as to whether it agreed that the prepetition arrearage was cured and whether debtors are otherwise current on payments, which was required 21 days after service of the Trustee's Notice of Final Cure.

The Chapter 13 Trustee filed a non-opposition to the Motion.

The court notes that on November 13, 2013, Creditor Green Tree Servicing, Inc. filed a document titled "Response to Notice of Final Cure Payment Rule 3002.1," stating that it concurs that all prepetition arrears have been paid in full and the Debtors are current in post petition payments.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts. Here, Creditor failed to timely file a Response to Notice of Final Cure Payment within 21 days after the service of the notice as required by Federal Rule of Bankruptcy Procedure 3002.1(g). However, Creditor filed a late response, agreeing that all payments have been made. A review of the Notice of Final Cure Payment indicates that debtors have made all payments under the plan for arrears to Green Tree Servicing, LLC. Dckt. 65. Therefore, the court finds Erin Costello Wilson and Kelly Martin Wilson, Debtors, have cured the mortgage default to Green Tree Servicing, LLC, as required by the Chapter 13 Plan.

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

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

The Motion for Order Confirming Final Cure of Mortgage Default 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 the court finds Erin Costello Wilson and Kelly Martin Wilson, have cured the mortgage default to Green Tree Servicing, LLC, as required by the Chapter 13 Plan.

63. [13-31261](#)-E-13 TUESDIA JOHNSON  
MMM-1 Mohammad M. Mokarram

CONTINUED AMENDED MOTION TO  
APPROVE LOAN MODIFICATION  
10-8-13 [[22](#)]

CONT. FROM 10-29-13, 10-08-13

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

Correct Notice Was Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. The creditor was not served the Motion and supporting pleadings.

**Tentative 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)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

#### **PRIOR HEARING**

The court continued the hearing on the Motion to Approve the Loan Modification to 3:00 p.m. on October 29, 2013 because of issues related to notice, evidence, and the motion. The court also ordered Wells Fargo Bank, N.A. to file with the court a copy of the Loan Modification Agreement, which it intends to have the Debtor signed and wants approved by the court.

#### **CONTINUANCE**

#### **Notice**

The supplemental Proof of Service states that the Motion and supporting pleadings were served on all Creditor, parties requesting special notice, Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

#### **Motion**

The amended motion sets forth sufficient basis for loan modification. Wells Fargo, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,416.46 (includes escrow payment). The modification will capitalize the pre-petition arrears and provides for interest rate at 4.125% until October 1, 2053.

### **Evidence**

However, Debtor failed to provide a copy of the Loan Modification Agreement as required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). It is not clear if the Wells Fargo Bank, N.A. did not provide a copy of the Loan Modification to counsel for the Debtor on or before October 15, 2013 or if the Counsel for the Debtor did not file and serve on the Chapter 13 Trustee the copy of the Loan Modification Agreement on or before October 17, 2013.

### **SUPPLEMENTAL EXHIBIT**

On November 5, 2013, Debtor filed a Loan Modification package, with the Loan Modification Agreement attached. However, these documents have not been properly authenticated. No declaration by a person with personal knowledge has been filed providing what these documents are and whether they are true and correct copies.

Based on the insufficient evidence, the court denied the motion without prejudice.

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

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

The Motion to Approve the Loan Modification filed by 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 denied without prejudice.

64. [13-31261](#)-E-13 TUESDIA JOHNSON  
TSB-1 Mohammad M. Mokarram

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
CUSICK  
10-10-13 [[25](#)]

CONT. FROM 11-5-13

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Approve Loan Modification. The Motion was denied based on failure to provide proper evidence.

Therefore, the Objection is sustained.

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

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

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

**IT IS ORDERED** that the Objection to confirmation is sustained and the plan is not confirmed.

65. [13-32861](#)-E-13 JAMES/BETH FRY  
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF  
GMAC MORTGAGE, LLC/DITECH  
MORTGAGE CORP  
11-1-13 [[17](#)]

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, respondent creditor, and Office of the United States Trustee on November 1, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to continue the hearing on the Motion to Value to xx:xx x.m. on \_\_\_\_\_, 201x.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5966 Raymond Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$100,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$106,496.00. Creditor GMAC Mortgage, LLC/Ditech Mortgage Corp's second deed of trust secures a loan with a balance of approximately \$70,000.00. Therefore, the Debtor seeks to value the creditor's secured claim is determined to be in the amount of \$0.00.

#### **CREDITOR'S OPPOSITION**

Creditor Wells Fargo Bank, N.A., as Indenture Trustee for GMACM Home Equity Loan Trust 2005-HE2, filed opposition, stating that Debtor failed to submit any evidence in support of the proposed Property value beyond the lay opinion of the Debtor. Based on information and belief, Creditor maintains that the Property's value is substantially more than \$100,000.00. Creditor consequently requests an opportunity to obtain a verified appraisal of the property.



tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral of Ocwen Mortgage. The court continued the motion to allow the parties to conduct discovery and for the Creditor to file its evidence.

The Trustee also notes that the Debtors may not be able to make the plan payments as the plan calls for payments of \$1,250.00 per month for sixty months and Debtors Schedule J lists net income of \$308.17 per month. It appears that Debtors cannot make the payments called for by the plan.

The Court continues the hearing on the Objection to Confirmation.

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

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

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

**IT IS ORDERED** that hearing on the Objection to Confirmation the Plan is continued to 3:00 p.m. on -----  
-, 201x.

67. [09-30366-E-13](#) STEPHEN/MICHELLE MACHADO                      OBJECTION TO CLAIM OF FRANCHISE  
WW-2                      Mark A. Wolff                      TAX BOARD, CLAIM NUMBER 17  
10-10-13 [[69](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 61 days' notice was provided. 44 days' notice is required.

**Final Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 Objection to Proof of Claim number 17 of Franchise Tax Board is sustained and the claim is disallowed in its entirety.** No appearance required.

The Proof of Claim at issue, filed by the Debtors, listed as claim number 17 on the court's official claims registry, asserts \$3,567.64 priority claim. The Debtor objects to the Proof of Claim on the basis that it is duplicative of claim number 9, which was filed by the Franchise Tax Board in the amount of \$3,557.48. Counsel for Debtor states the duplicate claim was filed by their office erroneously under the belief that the Franchise Tax Board had not filed a claim in this case.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

A review of the claims registrar shows that Proof of Claim No. 17 was filed by the Debtors on behalf of the Franchise Tax Board for \$3,567.64. Proof of Claim No. 9, filed by the Franchise Tax Board, is in the amount of \$3,557.48. Proof of Claim No. 17 appears to be a duplicate of Proof of

Claim No. 17. The Franchise Tax Board having been properly served and not responding to this motion, the court grants the motion.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Franchise Tax Board filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 17 of Franchise Tax Board is sustained and the claim is disallowed in its entirety.

68. [13-32466-E-13](#) TANESHIA WRAY  
NLE-1 Steven A. Alpert

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-7-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtor's best effort. The Debtor is below median income and the Debtor's residence is listed as Class 3 surrender. However, Trustee states that Debtor testified at the Meeting of Creditors that she is still living there and attempting to get a loan modification. Debtor stated she has not paid the mortgage in approximately a year and a half and the house is not yet in foreclosure. Debtor lists rent of \$1000 on Schedule J and the Trustee objects to this expense as it is not being paid.

Trustee also objects on the basis that the plan is not feasible. The Trustee calculates that his plan will not complete within 60 months. The plan lists a debt to Heritage Community Credit Union for a 2006 Lexus in Class 2B and lists the value as \$7,700.00 with the total claim as \$13,324.00. However, no motion to value secured claim has been filed to date. Further, the Trustee notes that the vehicle was refinanced in October 2011, less than 910 days prior to the filing date and the vehicle might not be eligible for valuation. The Trustee calculates that the plan will take 69 months to pay this secured debt in full as well as the priority claims, attorney fees and trustee fees. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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.

69. [12-38173](#)-E-13 DANIEL/REBECCA BODENHAMER MOTION TO MODIFY PLAN  
NSV-2 Nima Vokshori 10-18-13 [[72](#)]

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 18, 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 the plan on the basis that the plan payment is not sufficient to pay the monthly contract installment and monthly dividends. The debtors are proposing a plan payment of \$4,262.00. The monthly contract installment is \$2,186.32, Class 1 arrearage dividend \$2,937.50, Class 2 monthly dividends \$479.47, which total \$5,603.29 plus trustee fees.

The Trustee also objects that the debtors declaration in support of confirmation does not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). The Trustee argues that the declaration does not address the changes in the debtor's income and expenses. The Debtor's income has increased from \$6,876.11 to \$7,426.69 and expenses have increased from \$2,243.00 to \$3,155.00.

**DEBTOR'S RESPONSE**

Debtors respond stating that the proposed plan incorrectly lists the monthly Class 1 arrearage dividend as \$2,937.50, when it should have been \$719.91, which is the equal monthly payment required to fully repay Class 1 arrears over the 60 month plan term.

Debtor also filed a Declaration with brief explanations for the increase in salary from a raise at Debtor's employment, and increased expenses due to mechanical problems with two automobiles, and co-Debtor undergoing surgery.

Based on the response filed by Debtor, the Motion to Confirm the Modified Plan is granted.

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 18, 2013, as amended to provide for \$701.01 Class 1 arrearage dividend, 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.

70. [10-23574-E-13](#) HARJINDER SINGH  
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTOR'S  
ATTORNEY(S), FEES: \$1,660.00,  
EXPENSES: \$0.00  
11-4-13 [[108](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditor, and Office of the United States Trustee on November 4, 2013. By the court's calculation, 36 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 \$1,660.00. 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. Motion to Approve Loan Modification and Motion to Modify the Plan. Counsel corresponded with Debtor, Trustee and other relevant parties and reviewed relevant documents to prepare and defend these motions. suggests these motions were unanticipated as the Debtor obtain a trial loan modification and than a permanent loan modification.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 8.30 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 \$1,660.00 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 \$1,660.00.

71. [13-31975-E-13](#) JACK/LINDA GANAS MOTION TO VALUE COLLATERAL OF  
PLC-1 Peter L. Cianchetta CAPITAL ONE AUTO FINANCE  
10-25-13 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 46 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 \$14,061.00.** No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of a 2008 Ford Mustang GT. The Debtor seeks to value the property at a replacement value of \$14,061.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on or about November 1, 2007, more than 910 days prior to filing of the petition, with a balance of approximately \$19,268.10. 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 \$14,061.00. 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 Capital One Auto Finance secured by an asset described as 2008 Ford Mustang GT is determined to be a secured claim in the amount of \$14,061.00, 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 \$14,061.00 and is encumbered by liens securing claims which exceed the value of the asset.

72. [13-32875-E-13](#) ANGELO/LISA OLIVA  
NLE-1 Stephen C. Ruehmann

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-7-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor has failed to file all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. §§ 1308 and 1325(a)(9).

The Trustee filed a supplemental declaration, stating that on December 4, 2013, the Trustee received by email copies of Debtors tax returns for 2008, 2009, 2010 and 2011. However, Trustee states Debtors have failed to commence plan payments and are delinquent by \$5,432.00.

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.

73. [13-32177-E-13](#) DARSHAN SINGH MOTION TO CONFIRM PLAN  
JLB-1 James Brunello 10-24-13 [[20](#)]

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 24, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee 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 motion on the basis that the Debtor's declaration in support of the motion provides insufficient evidence and merely states the components of 11 U.S.C. § 1325(a). The Debtor makes no reference in his declaration to changes made to Schedule D, I and J filed with this motion. The debtor increased his income and expenses without providing an explanation.

The Trustee also objects on the basis that the Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$12,706.44 and the Debtor is proposing a 0.09% dividend to unsecured creditors or approximately \$177.23. However, the plan will payout approximately 9.5% or \$18,896.36 to general unsecured claims as proposed (\$2,410 less than non-exempt equity in real and personal property). The non-exempt equity in property includes \$6,502 in equity in 7916 Doe Trail, Antelope, California (1/2 interest-total nonexempt \$30,204 - \$17,200 COS = \$13,004); \$4,036.12 in nonexempt equity in a 2005 Lexus GX470 and \$2,168.32 in non-exempt equity. The Trustee suggests the Debtor increase

the dividend to general unsecured either in the order confirming or in an amended plan.

Additionally, the Trustee argues the Debtor's plan does not propose equal distribution payments to Class 2 creditors, which causes the plan to not be feasible. In Class 2 of the plan, Debtor proposes to pay Schools Credit Union a monthly dividend of \$8,355 per month. Debtor has proposed a plan payment of \$754 for the remaining 59 months in the plan. Trustee states that the monthly dividend to Schools for payment of the 07 Toyota Camry should be \$140 per month.

Lastly, the Trustee states that the Debtor's plan may not be the best effort under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying \$225.00 per month for month 1 and \$754.00 for 59 months with a dividend of 0.09% to unsecured claims.

The Trustee is unable to determine whether all disposable income has been proposed into the plan. The Trustee received only 3 paystubs for non-filing spouse and 2 copies of checks deposited into the bank account showing net payroll amount. The Trustee states a review of the paystubs and deposit slips shows the non-filing spouse's average gross income is approximately \$6,635.48 (based on 5 pay dates) as opposed to the \$4,744.00 listed on the Amended Schedule I.

Trustee states the non-filing spouse's withholdings also appear to be inaccurately reported on Schedule L. Trustee provides that the average taxes withheld appears to be approximately \$1,635.79 per month and it appears that Debtor's spouse has recently started having a medical insurance deduction of approximately \$173.33 per month. Based on the Trustee's calculation, spouse's net disposable income should be approximately \$4,826.36 per month, so it appears that the amount on the Amended Schedule I as the gross income is in fact the net income.

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

74. [10-51978-E-13](#) SANDI THOMAS MOTION TO MODIFY PLAN  
PGM-2 Peter Macaluso 10-18-13 [[90](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2013. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 18, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

75. [12-36378-E-13](#) MARILYN/JOSHUA JOHNSON CONTINUED MOTION TO APPROVE  
PGM-5 Peter G. Macaluso LOAN MODIFICATION  
8-9-13 [[134](#)]

**CONT. FROM 9-10-13 & 10-08-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 32 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).

**The court's decision is to grant the Motion to Approve Loan Modification.**

No appearance at the December 10, 2013 hearing is required.

**09-10-13 PRIOR HEARING**

Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$2,511.28 to \$2,320.66. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 4.500% to 4.500% over the next 22.16 years.

However, the Motion failed to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), as it failed to provide a copy of the credit agreement. The Exhibit A attached to the Motion is a copy of the letter with a summary of the proposed terms of the modification agreement. This is insufficient. FN.1.

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FN.1 This is not merely a trial loan modification for which a future loan modification motion will be required. Here the court, Chapter 13 Trustee, U.S. Trustee, and creditors are deprived of seeing the actual Loan Modification Agreement and terms which are to be approved. While the court does not have a reason to believe that Wells Fargo Bank, N.A. is trying to hide something from the court, the Rules are equally and fairly applied to all parties. It does not require one to have much of an imagination as to how less scrupulous parties could attempt to mislead the court and consumer by hiding the actual agreement and what that less scrupulous creditor would describe as "mere standard, boilerplate terms that really should mean nothing to the consumer or court."  
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**10-08-13 PRIOR HEARING**

The court continued the hearing to allow the Debtor to provide the Loan Modification.

Debtor filed a supplemental declaration stating that they have only been provided the two pages from Wells Fargo describing the terms of the modification. Debtor asserts that Wells Fargo will not send out the full loan modification until the court grants permission.

Wells Fargo Bank, N.A. may chose to engage in it businesses practices as it determines is consistent with good faith dealings with its clients and shareholders, and complies with applicable law. The Debtors' declaration indicates that the choice of business practices includes not providing the court with copies of the actual credit agreements which the Bank seeks to have debtors enter into and the court approve. The court, blinded by the non-disclosure of the credit agreement, cannot grant the motion and approve the loan modification.

From the information letter issued by Wells Fargo Bank, N.A., Exhibit A, the Bank states,

- A. Certain identified term changes,
- B. The Debtor is instructed to "file a petition with the bankruptcy court to gain their consent to modify the first mortgage."
- C. "Your client [the Debtor] will need to continue to make their trial period payments if applicable while we are waiting for consent from the court."
- D. Once received [written consent], we will send the loan documents to you and your attorney for original signatures."

The court previously approved the trial loan modification, authorizing . Order, Dckt. 116. Trial modification payments are in the amount of \$2,320.66. Exhibit A, Dckt. 98.

#### **CONTINUANCE**

The court issued an order providing the "court's consent" and order for Wells Facto Bank, N.A. to file (1) a Response to the motion explaining why the actual credit agreement cannot be produced for the court, and (2) to file a copy of the credit agreement which Wells Fargo Bank, N.A. wants the court to approve for the loan modification.

#### **SUPPLEMENTAL PLEADINGS**

On December 3, 2013, Creditor Wells Fargo Bank, N.A. filed the Declaration of Derek Wilcox, Vice President of Wells Fargo Bank, N.A., offering the loan modification agreement.

Mr. Wilcox explains that when a loan modification is granted while a borrower is in an active bankruptcy case, the normal practice of Wells Fargo Bank, N.A. is to provide an approval letter which outlines the post-modification terms of the Modification Agreement. Once Court approval is obtained, the final Agreement is then sent for the borrower's acceptance and signature. However, Mr. Wilcox states that upon request of the borrower's bankruptcy attorney or the *pro se* borrower, the actual agreement can be

provided. Due to a training issue, Mr. Wilcox states that the agreement was not provided upon request in this case and it has taken action to correct this issue from occurring in the future.

Wells Fargo Bank, N.A. has provide a reasonable explanation as to why and how a copy of the loan modification agreement was not provided to the Debtor's counsel. Further, that the Bank understands the need of the court for the document and that it has put in place procedures so that such documents will be available in connection with bankruptcy cases. This resolves the issues and there is no need for oral argument to be presented to the court.

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

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

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

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

**IT IS ORDERED** that Marilyn and Joshua Johnson, Sr., Debtors 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 4628 Story Way, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 161, in support of the Motion.

76. [09-37979-E-13](#) MAURILIO/MINDA PEREZ  
CLH-7 Cindy Lee Hill

MOTION TO MODIFY PLAN  
10-28-13 [[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 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, 43 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 28, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

77. [10-28282-E-13](#) FRANCISCO/ELNORAS GARCIA MOTION TO MODIFY PLAN  
PGM-8 Peter Macaluso 10-18-13 [[131](#)]

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 18, 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 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 \$991.00.00 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 filed a response stating they will be current on or before the hearing date. However, no evidence was presented to the court that the Debtors are in fact current under the terms of the plan. Further, the Debtors offer no explanation as to how they can and will find an "extra" \$1,000.00 to cure the default when they are already stretched financially to provide all of their projected disposable income to fund the plan. The Debtors offer no evidence in response, just the arguments of counsel, "trust me, they will somehow be current when the hearing comes around. And, don't ask how or why they defaulted or where they got this extra money." FN.1.

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FN.1. The Debtors' income and expense information, Exhibits 2 and 3, Dckt. 134, show how dire their financial situation and it is impossible for them to come up with the "extra" \$1,000 (two months worth of payments). The Debtors' combined average monthly income is \$4,851.00. Exhibit 2. In addition to taxes and union dues, the Debtors have \$749.00 a month deducted for a domestic support order.

For expenses, the Debtors have \$4,176.00 of necessary expenses a month. This leaves only \$675.00 a month in projected disposable income.

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Therefore, 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.

78. [09-39989-E-13](#) PATRICK/TIFFANY DEWEES MOTION TO SELL  
PGM-6 Peter Macaluso 11-8-13 [[97](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 33 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:

Debtor proposes to sell the real property commonly known as 8361 Willowdale Way, Fair Oaks, California. The pending offer is for \$300,000.00. Debtor anticipates receiving \$3,000.00 for relocation expenses from the proceeds of this sale. Debtor will continue with the Chapter 13 Plan for the remaining 11 months.

#### **OPPOSITION**

Greentree Servicing LLC ("Creditor") filed an opposition. Creditor expects to be paid in full and will not take less than the full payoff of the loan. Additionally, Creditor wants to reserve the right to approve any short sale or sale of the Property for less than the total amount owed on each valid lien against the Property combined.

However, Greentree Servicing, LLC, (a loan servicing company which works for the real creditor) does not explain why or how it is a creditor in this case. Given that Greentree is represented by counsel who regularly appears in this court, and that such counsel knows this court enforces the federal rules and Constitutional requirement that there be an actual case or controversy between the purported parties, the court cannot understand how Greentree Loan Servicing, LLC is appearing as a "creditor."

The Opposition states that the deed of trust securing the creditor's claim has been assigned to Greentree Loan Servicing, LLC. However, as Greentree well knows from other appearances before this court, the security

always follows the debt and cannot be severed and transferred to someone other than the actual creditor. The proof of claim filed in this case for which the real property is collateral was filed by JPMorgan Chase Bank, N.A. Proof of Claim No. 5.

The Debtor included as Exhibit C an approval of the actual creditor to the sale terms. Dckt. 100. This document identified Greentree as the "servicer," not the "creditor." The owner of the claim is identified as the "investor," Fannie Mae. There is also a letter dated November 6, 2013, from JPMorgan Chase Bank, N.A. stating, "We [JPMorgan] agree to your request to sell your home for less than the balance of your mortgage loan." *Id.* at 27. This letter states that the payment must be made to JPMorgan Chase Bank, N.A.

While the documents are not clear whether it is JPMorgan Chase Bank, N.A. which still has the claim or Fannie Mae has purchased the loan, what is clear is that Greentree Servicing, LLC is not the creditor. Given that this court has previously addressed with Greentree the misrepresentation of itself as a creditor as part of perceived scheme to defraud debtors and the court, it is shocking to see the present misrepresentation by Greentree Servicing, LLC.

The court will address this misrepresentation by a separate order to show cause to determine how significant a corrective sanction will be required for Greentree Servicing, LLC to cease making such misrepresentations. The court will leave it to the United States District Court to determine what punitive sanctions are appropriate as to Greentree Servicing, LLC and the appropriate action to take with respect to counsel who are in league with Greentree Servicing, LLC in this misrepresentation.

The Objection of Greentree Servicing, LLC is overruled. FN.1.

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FN.1. The court finds it somewhat ironic that JPMorgan Chase Bank, N.A included the following affidavit (part of Exhibit C, *Id.* at 32) which it requires to be signed by the consumer,

"Additionally, I/we fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly and willfully make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq."

Given the JPMorgan Chase Bank, N.A. "concern" over the possible fines and imprisonment in connection with misrepresentations, the court will also consider whether the misrepresentations in connection with Greentree Servicing, LLC should be referred to the U.S. Trustee, the U.S. Attorney for the Eastern District of California, the Federal Consumer Financial Protection Bureau, the Federal Trade Commission, and the California Attorney General.

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**REPLY**

Debtors filed a reply, stating Creditor has already consented to accepting \$269,455.42 as payment in full, pursuant to their letter dated October 18, 2013, which was filed as Exhibit C with this motion.

## **DISCUSSION**

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

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 Debtors, Patrick and Tiffany Dewees ("Debtor"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to Tyler Carlson or nominee ("Buyer"), the residential real property commonly known as 8361 Willowdale Way, Fair Oaks, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$300,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit B in support of the Motion. Dckt. 100.
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. The Debtor is authorized to receive the \$3,000.00 in relocation monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

79. [12-38289-E-13](#) BRUCE BUSBY MOTION TO MODIFY PLAN  
SDB-1 Scott deBie 10-25-13 [[22](#)]

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 25, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

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

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

80. [09-44890-E-13](#) VICTOR MONTANEZ MOTION TO AMEND CIVIL MINUTE  
PGM-7 Peter Macaluso ORDER FOR DOCKET CONTROL #PGM-4  
11-12-13 [[115](#)]

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, respondent creditor, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Amend Civil Minute Order for DCN PGM-4 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Amend Civil Minute Order for DCN PGM-4.** 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 requests that the Civil Minute Order for DCN PGM-4 be amended to allow for payment of approved funds to be paid through the Chapter 13 plan in a manner consistent with the plan. Debtor states that an application for additional fees was granted by the court but the application did not specify that the monies were to be paid by the Trustee through the Chapter 13 plan. The settlement check was received and given directly to Debtor and no monies were held in trust by counsel. Counsel states that it is in the best interest of the Debtor for the funds to be paid through the Chapter 13 plan and that the Trustee has already paid the fees in full. If the order is not amended, Debtor states it would require Counsel to return the funds to the Trustee, the Trustee would then return the funds to the

Debtor and the Debtor would then pay counsel. Debtor states this would be a hardship on all of the parties.

The Chapter 13 Trustee states that he paid the \$1,667.00 fees to the attorney after the civil minute order was entered on February 6, 2013. The Trustee overlooked the civil minute order which limited the disbursement to the adversary proceeding settlement. The Trustee states he is not aware as to whether any of the adversary proceeding settlement proceeds were paid to the Trustee. The Trustee states that in the event the Debtor's attorney refunds these fees, the Trustee is obligated under the plan to disburse them to unsecured claims, paying more than 1.25% to unsecured claims.

## **DISCUSSION**

Counsel sought the allowance of fees as a percentage of the recovery. This contingent fee recovery was approved by the court and ordered to be paid from the actual monies recovered. Order, Dckt. 75. What counsel now requests is that his fees not be paid as a contingent fee, but just as any other ordinary fees which are not dependent on a recovery.

Whether the contingent fee was reasonable or unreasonable is in part governed by what the client has agreed to with the attorney. When the client says, "yeah, a one-third contingent fee is reasonable and it's getting paid out of what we recover," the court is provided with strong evidence of reasonableness. However, when the client comes in after the fact and says, "sure, give my attorney an amount equal to one-third of what we recovered, but don't take it from what was recovered (because the services are not worth it), instead take it from monies which I can't touch but are to be paid with creditors," a very different story develops.

Counsel and the Debtor came to this court requesting that counsel be allowed fees equal to one-third of the \$5,000.00 recovered in an adversary proceeding. Motion for Allowance of Fees, Dckt. PGM-4. That Motion carefully avoids telling the court the basis for the \$5,000.00 received or what that payment in the Adversary Proceeding, 10-2048, represents. It could well be that the \$5,000.00 represents the legal fees in connection with correcting the alleged violation of the automatic stay.

The Debtor and counsel are now attempting to double-dip, counsel seeking fees on a contingent fee basis for what was recovered, the Debtor keeping 100% of what was recovered, and counsel then seeking to "surcharge" creditors since the Debtor is keeping 100% of what was actually recovered. The fact that counsel chose to turnover 100% of the monies before getting his contingent fees approved and receiving his one-third is not a reason to penalize creditors and make them pay counsel.

The court disagrees that the legal services provided were just beneficial to the estate. The Debtor was trying to retain his home and have the creditor state what the Debtor believed to be the correct monthly mortgage payment. The Debtor succeeded. No showing has been made that there were other damages to the estate for which counsel provided a benefit. The only person benefitting is the Debtor who (1) presumably got the creditor to agree to the mortgage payment he wanted, and (2) has now pocketed \$5,000.00, from which he apparently does not want to pay counsel for the service that benefitted the Debtor.

Counsel may demand the money from the Debtor. If the Debtor refuses to pay, then Counsel can seek to exercise his rights to receive payment for this post-petition obligation of the Debtor. That is between Counsel and the Debtor.

To the extent that the Trustee has improperly paid monies to Counsel, he can determine what, if anything, the Trustee needs to do to correct the situation.

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 Amend Civil Minute Order for DCN PGM-4 filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.

81. [10-25692](#)-E-13 JAMAL JAMMAL

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-9-10 [[1](#)]

Debtor's Atty: W. Steven Shumway

**Final Ruling: The Status Conference is removed from the calendar.** No appearance at the December 10, 2013 Status Conference is required.

Notes:

Continued from 11/19/13

[WSS-2] Motion for Entry of Chapter 13 Discharge filed 10/24/13 [Dckt 67], set for hearing 12/10/13 at 3:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for an Entry of 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 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 Motion for an Entry of Discharge is granted.** No appearance required.

With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the competition of plan payments. The Chapter 13 Trustee's final report was filed on May 14, 2013, and the order approving the report was filed June 16, 2013. Dckt. 51. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Effective May 1, 2012, there is a new procedure for obtaining a discharge under 11 U.S.C. § 1328(a). *See* Local Bankr. R. 5009-1. To receive a discharge, each debtor must complete and file with the court "Debtor's 11 U.S.C. § 1328 Certificate" (Form EDC 3-190); if applicable, each debtor must also complete and file with the court "Certificate of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions" (Form EDC 3-191). Form EDC 3-190 must be completed and filed in order for each debtor to receive a discharge.

After the court approves the Chapter 13 Trustee's Final Report and Account, the clerk will issue a "Notice of Intent to Enter Chapter 13 Discharge" (Form EDC 5-300) informing parties-in-interest that each debtor has completed and filed the requisite certifications. Should any parties wish to contest the debtor's certifications, they will be required to file an objection and a notice of hearing with the court and serve them on the debtor(s), the attorney for the debtor(s), and the chapter 13 trustee within 14 days of the Form EDC 5-300 notice. If an objection and a notice of hearing are not timely filed and served, the court may then conclude that each debtor is entitled to a discharge under 11 U.S.C. § 1328, and without further notice, grant each debtor a discharge. A motion for entry of

discharge is unnecessary. See Gen. Order 11-04, ¶ 5 (authorizing the Clerk of Court to enter a Chapter 13 debtor's discharge where no objection has been filed after notice an opportunity for hearing).

However, here, Debtor failed to file the form EDC 3-190 Debtor's 11 U.S.C. § 1328 Certificate and the case was closed without discharge. Dckt. 56. The debtor then reopened the case, filed the required documents and moved for a discharge.

The Trustee filed a statement of non-opposition.

Based on the foregoing, the court grants the motion and the discharge for Debtor Jamal A. Jammal shall be entered by this court.

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

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

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

**IT IS ORDERED** that the Motion is granted and the court shall enter the discharge for Jamal A. Jammal, Debtor in this case.

83. [13-31392-E-13](#) MANUEL HERNANDEZ  
TJW-2

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-24-13 [[43](#)]

CASE DISMISSED 11/19/13

**Final Ruling:** The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

84. [13-31392-E-13](#) MANUEL HERNANDEZ  
TJW-2

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA N.A.  
10-21-13 [[31](#)]

CASE DISMISSED 11/19/13

**Final Ruling:** The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

85. [13-22393](#)-E-13 VALERIE KEYS  
UST-2 Pro Se

MOTION FOR ASSESSMENT OF FINES  
AGAINST, AND FOR FORFEITURE OF  
FEES BY, DIANE LORE  
11-6-13 [[67](#)]

CASE DISMISSED 6/28/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Diane Lore on November 6, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Assessment of Fines Against and for Forfeiture of Fees by Diane Lore 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 Assessment of Fines Against and for Forfeiture of Fees by Diane Lore is continued to 3:00 p.m. on January 14, 2013. No appearance required.**

The United States Trustee seeks to assess fines against and require the forfeiture of fees by bankruptcy petition preparer Diane Lore. On December 3, 2013, the United States Trustee continued the hearing to January 14, 2013 to extend the deadline for Diane Lore to respond to December 31, 2013.

Therefore, the hearing on the motion is continued to 3:00 p.m. on January 14, 2013.

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

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

The Motion for Assessment of Fines Against and for Forfeiture of Fees by Diane Lore filed by the U.S. Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



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.

87. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN MOTION TO VALUE COLLATERAL OF G  
CAH-1 C. Anthony Hughes AND K HEAVEN'S BEST, INC.  
10-29-13 [[18](#)]

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

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

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

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

**IT IS ORDERED** that the Motion to Value Collateral is dismissed without prejudice.

88. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
NLE-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
11-12-13 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 12, 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. 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 10, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan fails the Chapter 7 Liquidation analysis. The Plan proposes to pay a 1% dividend to unsecured creditors, which totals \$2,768.00. The Debtors are operating a sole proprietor business called Heaven's Best of Sacramento. The Debtor lists on Schedule B a value for the business of \$27,810.00; however, the value of the business may be higher according to the Trustee. The Debtor filed a "Schedule B - Attachment A", which listed 23 clients, \$20,769.50 of accounts receivable, and 29 other assets, including two vehicles listed without mileage or options packages. Most of the assets listed do not have any technical description. The Debtors admitted at the First Meeting of Creditors held on November 7, 2013 that they purchased two shampooers for the business, valued at \$1,500.00 however these assets are not listed on Schedule B. The Trustee does not believe the Debtor has furnished sufficient evidence to prove the value of the business equipment, or the value of the business is an ongoing concern.

The Trustee also objects on the basis that the Debtor's plan is not the Debtor's best effort. The Debtor is under the median income and proposes plan payments of \$875.00 for 60 months with a 1% dividend to unsecured creditors, which totals \$2,768.00. Beginning September 1, 2013, the Debtors began operating their business as a sole proprietor. The Debtor lists gross income from the Business on Schedule I at \$11,000.00 per month, however Form B22C reflects the six month average income of only \$1,900.00. The Statement of Financial Affairs reflects year to date income of \$10,433.00 from the business, which does not appear to be listed on Form B22C.



Creditor G and K Heaven's Best, Inc. objects to confirmation of the Chapter 13 plan on the basis that the Motion to Value Collateral has not been granted and is disputed. The Debtor withdrew the Motion to Value collateral.

Creditor also argues that the plan does not meet the liquidation analysis. Creditor also argue that the Debtors have not met the disposable income test. Creditor also contends that the Debtor have not properly completed their schedules and disclosures. Creditor also argues that the plan has been proposed in bad faith and states that Debtors have attempted financial extortion to defraud the sellers of this viable business entity into accepting less than what the business sold for 18 months ago. Creditor also claims that assets have not been disclosed or are undervalued. Creditor argues that the plan should be denied or the motion should be set for an evidentiary hearing.

Debtor responded, stating that they will file an adversary proceeding for 547 preference and treat G & K Heaven's Best, Inc. as a general unsecured creditor. Debtor states they will have to file an amended Chapter 13 plan.

Based on the foregoing, 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.

90. [13-26795-E-13](#) ROSHUN/NAOMIE WYNNE  
GFG-78 Keith R. Wood

MOTION TO APPROVE LOAN  
MODIFICATION  
10-31-13 [[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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 31, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Tentative 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).

**The court's tentative decision is to deny the Motion to Approve the Loan Modification without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **RULE 9013**

The Motion to Approve Loan Modification with Select Portfolio Servicing states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Debtors filed for relief under Chapter 13 of the United States Bankruptcy Code on May 17, 2010.
- B. The Debtors entered into an agreement for a Loan Modification with SPS for their residence at 424 Loggerhead Way, Sacramento, California.
- C. Exhibit 1 is from SPS, it shows the proposed terms of the trial modification.

The Motion to Approve Loan Modification 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 read the Loan Modification Agreement to determine the terms. This is not sufficient for the court to approve a loan modification.

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."

#### **RULE 4001(c)(1)(B)**

Federal Rule of Bankruptcy Procedure 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). The court must know the details of the collateral as well as the financing agreement to adequately review financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007). Here, the motion has not adequately listed the material provisions of the loan modification.

Furthermore, the loan modification appears to be a trial loan modification. As this is not a final approval of the loan modification, the payments either have to be made through the Chapter 13 Trustee or, by special order, by the Debtors directly for only a limited period of time. Debtors have not specified the relief required to approve the requested loan modification.

**NAMED CREDITOR**

Debtors state that they have secured a loan modification of the existing mortgage on the residence at 424 Loggerhead Way, Sacramento, California with "Select Portfolio Servicing." The attached Loan Modification Agreement lists Select Portfolio Servicing, Inc as the "Lender." However, a review of Proof of Claim No. 3-1 has been filed by HSBC Bank USA, N.A., as Trustee, as the creditor with Select Portfolio Servicing, Inc. named as the servicer for the secured claim on 3424 Loggerhead Way, Sacramento, California real property.

The court does not venture a guess who or what Select Portfolio Servicing, Inc. may be or whether the present order is of any force and effect. Presumably counsel for the Debtors believes that he has identified the correct, legally existing, and competent entity for whom the court may grant relief. It appears to the court that approving a loan modification between the servicing company and the Debtor is of little, if any, legal significance.

Given that a Proof of Claim was filed by HSBC Bank, USA, as Trustee, on September 18, 2013, and no assignment of the Claim has been filed, the court wonders if this "agreement" with the consumer is part of a scheme or device to defraud the court and consumer into believing that there is a "loan modification." Then, after the bankruptcy proceedings have been completed the true creditor, having "banked defaults" then springs on the consumer, snatching away the property and reaping the appreciation at the expense of the consumer. FN.1.

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FN.1. The court notes another perjury, Rule 9011 problem. Proof of Claim Number 3-1 is signed by Joely K. L. Bui, an attorney with the Wolf Firm. Ms. Bui states that she, or the Wolf Firm, is the creditor. She checked the box on page 2 of the Proof of Claim 3-1 stating that she is signing the proof of claim stating "I am the creditor," and not the box "I am the creditor's authorized agent." Just as Alice cried, "Curiouser and curiouser!" LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND AND THROUGH THE LOOKING-GLASS 11 (Puffin Books 1998) (1865).  
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Based on the procedural deficiencies, the Motion to Approve Loan Modification is denied without prejudice.

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

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

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

**IT IS ORDERED** that the Motion is denied without prejudice.

91. [13-26795-E-13](#) ROSHUN/NAOMIE WYNNE MOTION TO CONFIRM PLAN  
GFG-99 Keith Wood 10-25-13 [[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 Debtors, 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, 46 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 plan is not the Debtors' best effort. The Debtor is over the median income and proposes plan payments of \$100.00 for 60 months with a 0% divided to unsecured claims. The Trustee states that the Debtor provided the 2012 income tax return, after the Trustee filed his objection to Confirmation. The 2012 tax return reflects a refund of \$6,918.00 and is dated May 13, 2013, with this case being filed on May 17, 2013. The refund does not appear on Schedule B or D, so the plan may fail liquidation as well.

The Trustee also states that Schedule J reflected a mortgage expense of \$2,100.00 to be paid by the Debtor directly and the amended Schedule J filed October 25, 2013 reflects an expense of \$1,840.41 to be paid to Class 4, with additional provisions providing that it is to be treated outside the plan. Debtor filed a motion to approve a loan modification agreement, which provides that payments do not commence until September 1, 2013 and

will be \$1,840.17 at that time. Trustee states that Debtor has not provided any explanation as to what happened to the \$2,100.00 due June, July, and August 2013, for a total of \$6,300.00. If these funds were not used to pay the mortgage, Trustee states they would more than double the total dollar amount paid in the plan.

Debtor responds, stating they have filed an amended Schedule B & C listing the 2012 income tax refund. Debtors state under a Chapter 7 liquidation, unsecured creditors would receive 0% as all property of the estate is exempt. Debtors state in June, July and August 2013, Debtors made loan modification trial payments of \$1,840.17, which have not become part of the final loan modification agreement.

While Debtors may have addressed the income tax return with the amended Schedules B & C, Debtors have not addressed what became of the additional funds set aside for June, July and August 2013 mortgage payments. The difference between the amount paid (\$1,840.17) and the amount provided for (\$2,100.00) over three months totals \$779.49. Debtors have not provided an explanation as to the use of these funds.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

92. [13-32995-E-13](#) JANET VIOLA  
LBG-2 Stephen J. Johnson

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-23-13 [[21](#)]

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 October 23, 2013. By the court's calculation, 48 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 10300 Wise Rd., Auburn, California. The Debtor seeks to value the property at a fair market value of \$45,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor also provided a declaration of an appraiser as evidence.

The first deed of trust secures a loan with a balance of approximately \$59,771.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$74,358.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 10300 Wise Rd., Auburn, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$45,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

93. [13-32995](#)-E-13 JANET VIOLA **OBJECTION TO CONFIRMATION OF**  
NLE-1 Stephen J. Johnson **PLAN BY DAVID CUSICK**  
**11-12-13 [28]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 12, 2013. By the court's calculation, 28 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 overrule the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan relies on a pending motion to value collateral of

Bank of America, N.A. 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 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

94. [12-32696](#)-E-13 MICHAEL/CONNIE YU  
SAC-2 Scott A. CoBen

CONTINUED MOTION FOR  
COMPENSATION FOR SCOTT A.  
COBEN, DEBTOR'S ATTORNEY(S),  
FEES: \$6,675.00, EXPENSES:  
\$0.00  
7-30-13 [[49](#)]

CONT. FROM 8-27-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The 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). The Trustee and Debtor having filed responses, the court will address the merits of the motion.

**The court's tentative decision is to grant the Application for Fees.** 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

#### **FEES REQUESTED**

Scott Coben & Associates, Counsel for the Debtors, makes a Request for the Allowance of Fees in this case. Counsel states that he filed an adversary proceeding entitled *Yu v. Everhome*, Case No. 12-02301. The gravamen of the complaint was that the trustee's sale was defective and should be set aside. The court approved the employment of counsel on July 26, 2012. Counsel now seeks allowance of its fees and costs incurred in representing the Debtors during the adversary proceeding from and including July 9, 2012 to and including March 27, 2013.

#### **DEBTOR'S OPPOSITION**

Debtor Michael Yu filed a hand written opposition on August 9, 2013, which states,

"I, Michael Yu objected to the fees that my Lawyer charge.  
I will attend the court hearing to explain why."

Dckt. 54.

## **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee states he has no opposition to the granting of the Debtors' motion for additional fees. The Trustee notes that if the attorney fees are granted, the Debtor will need to promptly modify the plan.

## **DISCUSSION**

### **Task Billing Analysis**

The Motion seeks for the court approve \$6,675.00 in attorneys fees. Counsel provides the following task billing analysis.

**Administrative Matters, \$2,675.00.** Counsel states that in this category of services the "Administrative Matters" are:

- a. Preparation of a five page Complaint.
- b. Reviewed answer to Complaint.
- c. Attend an objection to confirmation of Chapter 13 Plan based on the pending adversary proceeding.
- d. Preparation of five page supplemental brief and related documents in support of confirmation.
- e. Communication with Client and Everhome (creditor) regarding return of funds to Trustee.

While denominated "Administrative Matters," it appears that these are actually substantive litigation. The court cannot ascertain why or how these services constitute "Administrative Matters."

**Attorney Employment, \$250.00.** These fees relate to obtaining court authorization for the Chapter 13 Debtor to employ counsel to prosecute the adversary proceeding.

**Discovery, \$525.00.** These services related to the Rule 26 disclosures and proposing a discovery plan. Counsel communicated with counsel for the defendant concerning the discovery plan in the adversary proceeding.

**Injunction, \$2,350.00.** These services are for preparing a motion and supporting pleadings for a preliminary injunction, review of opposition, and meeting with the Client to address the motion. Counsel prepared a reply to the opposition, attended the hearing on the motion for preliminary injunction, and the status conference in the adversary proceeding.

**Settlement, \$875.00.** These fees are for communications with the Client and opposing counsel regarding potential settlement of the adversary proceeding. A settlement was achieved, but the dismissal of the adversary

proceeding was delayed until counsel for the defendant executed the stipulation.

### **Review of Adversary Proceeding**

The legal services were provided by Counsel for *Yu v. EverHome Mortgage*, Adv. Pro. 12-2301. The adversary proceeding was commenced on July 10, 2012. The adversary proceeding asserted a claim that Everhome Mortgage, the creditor, and the trustee under the deed of trust which secured Everhome's claim, refused to provide the Debtor with the amount necessary to cure the default and stop the non-judicial foreclosure sale. Further, that the non-judicial foreclosure purported to have been conducted for Everhome Mortgage was void. The Complaint also requested an award of attorneys' fees.

The court denied the motion for a preliminary injunction on September 11, 2012. 12-2301 Dckt. 30. As reflected in the Civil Minutes, the parties failed to provide the court with competent, admissible, properly authenticated evidence of any foreclosure sale having been conducted. *Id.* Dckt. 32.

On March 28, 2013, a Stipulation Dismissing the Adversary Proceeding, with each party to bear its own attorneys' fees and costs, was filed. *Id.* Dckt. 35. Pursuant to the Stipulation, the court issued an order dismissing the adversary proceeding. *Id.* Dckt. 37.

From the present Motion, the court has no idea of what transpired in the adversary proceeding or the impact (benefit) to the Debtors and the estate. However, in reviewing the bankruptcy case file, the court first identifies a Stipulation filed on March 13, 2013, in the bankruptcy case which contains the following terms:

- A. The Debtors' Chapter 13 Plan shall provide for the payment of a \$34,620.38 arrearage on the Everbank secured claim, with monthly payments of \$578.00 to that creditor. The Debtors further committed to making monthly Chapter 13 Plan payments of \$2,485.00.
- B. Everbank shall not record the trustee's deed from the non-judicial foreclosure sale occurring on or about June 27, 2012.
- C. The adversary proceeding shall be dismissed, with each party bearing its own attorneys' fees, costs, and expenses.

Stipulation, Dckt. 43, and Order Approving Stipulation, Dckt. 47.

On May 24, 2013, the court filed its order confirming the Debtors' Chapter 13 Plan which provides for the payment of the Everbank secured claim as provided in the Stipulation.

At the hearing, Debtor stated he was in a trial loan modification. The court continues the hearing on the Application for Fees to 3:00 p.m. on December 10, 2013 to allow Debtor to file a new chapter 13 plan to incorporate the trial loan modification and attorneys fees.

**CONTINUANCE**

## Fee Request

Here, counsel for the Chapter 13 Debtors request court approval of fees for service provided the Debtors in connection with the adversary proceeding challenging Everbank's contention that it purchased the Debtors' residence at a non-judicial foreclosure sale. That litigation (which not clearly stated in the Motion) was successful, with the Debtors retaining the property and Everbank having a secured claim to be paid through the plan. Further, Everbank agreed not to record any purported trustee's deed from such non-judicial foreclosure sale of the Debtors' residence.

The Court continued hearing on the fee application to December 10, 2013 to ensure that Counsel prepared modified Plan and Motion to Confirm the Modified Plan. Counsel filed a supplemental declaration (Dckt. No. 58) explaining that he prepared and sent modified Plan and Motion to Confirm to Debtor. However, Debtor is refusing to cooperate with modifying the Plan. Counsel requests attorneys fees for additional time spent on the fee application between August 12, 2013 and December 10, 2013. Dckt. No. 59. This includes the time spent on continuance of the hearing on the fee application, Debtor's opposition to the fee application and Debtor's refusal to cooperate with the modification of the Chapter 13 plan.

It appears that Counsel's speculation may be correct. The Debtor may mistakenly believe that if he can sabotage confirmation of a plan in this case he can get the benefit of the loan modification and not have to pay for the legal services which obtained the loan modification. In addition to the \$6,675.00 in fees requested in the application, the court approves an additional \$1,475.00 in fees for services provided during the period August 12, 2013 through December 10, 2013. This includes \$500.00 for the December 10, 2013 hearing.

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).

The Debtor and the Estate received a substantial benefit in obtaining the loan modification. The benefit is so great that it appears the Debtor will no longer have to be bound in bankruptcy from three to five years.

The hourly rate for the fees billed in this case is \$250/hour for counsel. 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 \$8,150.00 are approved. No costs or expenses are requested by 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 Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that fees in the amount of \$8,150.00 are approved for Scott A. CoBen and Associates, which shall be paid through a Chapter 13 Plan, or if not paid through such plan, then by Michael Yu and Connie Yu, and each of them, jointly and severally. These fees are approved as final fees pursuant to 11 U.S.C. § 330 for the services provided. If the Debtors decide to proceed in this bankruptcy case, further fees must be requested to be approved by the court.



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 Citifinancial Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 527 Doncaster 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 \$244,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

96. [13-27996](#)-E-13 FREDERICK/JACQUELYN MOTION TO VALUE COLLATERAL OF  
RHM-4 TURNER AMERICREDIT FINANCIAL SERVICES DBA  
GM FINANCIAL  
Robert Hale McConnell 10-29-13 [[66](#)]

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 October 29, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The Motion is granted and creditor's secured claim is determined to be \$9,700.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2009 Nissan Altima 2.5S. The Debtor seeks to value the property at a replacement value of \$7,900.00 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 vehicle's title secures a purchase-money loan incurred on February 10, 2010, more than 910 days prior to filing of the petition, with a balance of approximately \$1,4000.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,700.00. 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 Americredit Financial Services dba GM Financial secured by an asset described as 2009 Nissan Altima 2.5S is determined to be a secured claim in the amount of \$9,700.00, 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 \$9,700.00 and is encumbered by liens securing claims which exceed the value of the asset.

97. [10-20797-E-13](#) JOEDALYN BIALK  
WW-2 Mark A. Wolff

MOTION TO SELL  
11-12-13 [[65](#)]

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

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

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. If the Debtor shows that the motion was properly served the court will work from the following tentative ruling:

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

98. [13-23198](#)-E-13 BYRON/JANET MUDD  
GFG-77 Keith R. Wood

MOTION TO AVOID LIEN OF  
DISCOVER BANK  
10-31-13 [[52](#)]

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 creditors, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Discover Bank for the sum of \$8,846.40. The abstract of judgment was recorded with Placer County on February 24, 2012. That lien attached to the Debtor's residential real property commonly known as 5213 Bay St., Rocklin, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$216,492.00 as of the date of the petition. The unavoidable consensual liens total \$375,614.10 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Discover Bank, Placer County Superior Court Case No. MCV0048788, recorded on February 24, 2012, with the Placer County Recorder, Document No. 2012-0016164-00 against the real property commonly known as 5213 Bay St., Rocklin, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

99. 13-23599-E-13 IVAN MONTELONGO  
PGM-3 Peter Macaluso

CONTINUED MOTION TO CONFIRM  
PLAN  
7-26-13 [[48](#)]

CONT. FROM 9-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 46 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:

**PRIOR HEARING**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the plan on the grounds that the plan exceeds 60 months with the claims filed. The Trustee calculates the plan will

complete in 110 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee states the total debt being paid through the plan totals \$219,227.20 and the Debtor is paying a total of \$168,000.00 into the plan.

The Trustee also objects as the Debtor proposes to value the secured claim of Charles Cumming, Jr., but has not filed a motion to value collateral.

Debtor responded, stating that he is in the process of filing a motion to avoid lien of the secured claim of Charles Cummings. Debtor also stated the plan is over-extended based on the pending exam by the Internal Revenue Service for the 2009 tax year. The Debtor asserts that the exam will not result in anywhere near \$45,000.00 liability.

However, no motion to value collateral or motion to avoid lien has been filed to date.

#### **CONTINUANCE**

The court continued the hearing to allow the Motion to Avoid Lien be heard. The Motion was denied on October 22, 2013. Dckt. 74. No motion has been refiled or set for hearing.

#### **REPLY**

The Debtor filed a reply, stating that the Internal Revenue Service amended its claim to a total priority amount of \$9,249.00 (reduced from \$57,742.89). Debtor states the plan is feasible.

However, Debtor does not address the issue with the denial of the Motion to Avoid Lien, which has not been refiled or set for hearing.

Therefore, 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.