

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

January 27, 2015 at 2:00 P.M.

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1. [14-29702](#)-C-13 ROOSEVELT/JOSIE NIXON CONTINUED OBJECTION TO  
DPC-1 Richard Jare CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-3-14 [[25](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 3, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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| <b>The court's decision is to overrule the Objection.</b> |
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**PRIOR HEARING**

The Court first heard this matter on December 9, 2014 and continued

the matter to provide Debtors' counsel to file a response and argue for confirmation of the Plan. Brief for Debtors was due December 30, 2014, which was timely filed. Trustee reply was due on January 13, 2015, which was timely filed.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The Plan relies on the Motion to Value the secured claim of Deutsche Bank National Trust Company. If the Motion is not granted, the Debtor lacks sufficient monies to fund the plan. 11 U.S.C. § 1325(A)(6).
2. It is not clear if Debtors can afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6), or if the plan is Debtors' best effort, 11 U.S.C. § 1325(b).

The income listed on Schedule I is not clear. Line 8h is listed as "Recycle Vol. Ret. \$350, Income Tx Refunds \$600." The income on Line 8h, in Column 1 for Debtor is listed as \$350.

Line 13 states "Tax Refund arrives April 2015, Next tax refund frees up \$500 a month, is not carried through on line 8a because he will retire and spread that money out to pay the trustee \$500 for the 1<sup>st</sup> 24 months. It will be the last Tax Refund because in his trade, high voltage hazards escalate with age so he must retire next year. Line 8h justification for vol. retirement because of employer matching."

Schedule I is not clear. No specific date is listed for Mr. Nixon's retirement. The Debtors, historically, have received a large federal return.

Form B22C shows that Debtors are above median income and have \$302.07 on line 59, which implies that \$18,124.20 may need to be paid to general unsecured creditors to satisfy the best effort requirements. The plan proposes no less than 8% of \$95,600, which is a total of \$7,648. The present shortfall could be remedied by payment of Debtor's projected tax refunds.

#### **DEBTORS' RESPONSE**

Debtors respond to Trustee's second objection and have filed amended Schedules I and J. Debtors explain that:

1. Line 57(a) of form 22 seeks a \$500 adjustment to means test because in Debtor Roosevelt Nixon's trade, high voltage hazards escalate with age so he must retire in 2015 at age 62. Debtors request a special circumstances exception from the means test to account for retirement in a trade where it is not safe to work past 62. Accounting for the \$500 special circumstances exception, the Plan complies with the means test.
2. Following retirement, Debtor Roosevelt Nixon expects that the retirement loan payments will stop because some corpus will be drawn

upon to pay off the loans upon retirement.

3. Debtors expect to receive state and federal tax refunds of \$12,200.
  - a. For 2013 taxable year, Debtors paid \$20,952 in income tax withholdings and received a tax refund of \$11,048. Debtor Roosevelt Nixon's withholdings for 2014 taxable year to date is \$19,300. The tax refund is expected to be below \$9,000. Roosevelt Nixon's withholdings for 2014 state taxes is approximately \$7,200. State taxes payable for 2014 will likely approach \$4,000, and the state tax refund will likely be \$3,200.
  - b. Schedule I, Line 13 is explained as follows: Debtors have allocated \$5,100 of the tax refunds to boost disposable income after retirement. The Plan anticipates a boost of \$300 per month in order to continue to pay the Trustee \$500 a month for 17 additional months following receipt of the refunds for a total of \$5,100.
  - c. Debtors have allocated \$7,100 of the tax refunds to pay for deferred costs. Debtors have deferred auto maintenance, clothing replacement, and home repairs and maintenance until receipt of tax refunds.
4. Debtors have budgeted \$1,104 per month for health insurance upon Debtor Roosevelt Nixon's retirement at 62. Debtors do not qualify for Medicare until age 65 in three years.

#### **TRUSTEE'S REPLY**

Trustee has reviewed the proposed order confirming plan (Dkt. 51) seeking to resolve the objections to confirmation. Trustee has reviewed the order confirming plan, which proposes \$3,200 lump sum before May 25, 2015, and \$3,200 before May 25, 2016. Trustee's objection will be satisfied if the Court is willing to confirm the plan as amended in the proposed order confirming.

#### **DISCUSSION**

The court granted the Debtors' Motion to Value the secured claim of Deutsche Bank National Trust Company on December 9, 2014. The granting of that motion resolved the Trustee's first Objection. Debtors have responded to Trustee's second objection and have filed an amendment to Schedules I and J. Because the court will confirm the plan as amended in the proposed order confirming, 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 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.

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2. [14-21209](#)-C-13 LAURIE STEFANELLI  
JRM-2 Joseph Manning

MOTION TO MODIFY PLAN  
12-23-14 [[77](#)]

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**Final Ruling:** The Debtor having filed a "Notice of Withdrawal" for the pending Motion to Confirm, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Bankruptcy Case, and good cause appearing, **the court denies without prejudice the Debtor's Motion to Confirm Modified Plan.**

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

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

A Motion to Confirm filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

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3. [14-28112](#)-C-13 ERKAN ISIK  
MMM-1 Mohammad Mokarram

OBJECTION TO CLAIM OF CITIBANK,  
N.A., CLAIM NUMBER 3  
11-25-14 [[16](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 25, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Claim of Citibank, N.A. is sustained.**

Erkan Isik, the Chapter 13 Debtor("Objector") requests that the court disallow the claim of Citibank, N.A. ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$28,789.98. Objector asserts that the claim is barred by the applicable statute of limitations under CCCP § 337.

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).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power

of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a home equity line of credit secured by real property located at 3702 Independence Place, Rocklin, California. However, Creditor does not provide the court with a money judgment evidencing there is a balance due upon an obligation for the payment based on a foreclosed deed of trust.

Debtor's counsel submitted a Declaration stating that the last date a payment was received under the subject contract was January 2010.

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 Citibank, N.A., Creditor filed in this case by Chapter 13 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 Proof of Claim Number 3 of Citibank, N.A. is sustained and the claim is disallowed in its entirety.

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4. [14-30613](#)-B-13 DONALD/BROOKE HOBART  
JGD-1 John Downing

CONTINUED MOTION TO VALUE  
COLLATERAL OF AMERICAN FIRST  
CREDIT UNION  
12-11-14 [[18](#)]

**Thru #6**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 11, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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| <b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b> |
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 985 West Sierra Brooks Drive, Loyalton, California. The Debtors seeks to value the property at a fair market value of \$111,000 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$124,754. The Creditor's second deed of trust secures a loan with a balance of approximately \$98,623.70. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.



## **CREDITOR'S OBJECTION**

Wells Fargo Bank, N.A. (as Indenture Trustee for Morgan Stanley Dean Witter Credit Corporation), Creditor, filed a Proof of Claim in the amount of \$100,137.92, including arrearage in the amount of \$100,137.92. Creditor requests that the court deny the instant motion or, alternatively, that the court grant a continuance to allow Creditor to procure an appraisal of the property.

## **DISCUSSION**

Creditor has not offered a competing valuation for the Court's consideration and has not submitted any contrary evidence of value. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' Motion to Value.

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

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

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

**IT IS ORDERED** that the Motion  
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 985 West  
Sierra Brooks Drive, Loyalton, 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  
confirm bankruptcy plan. The value of the  
Property is \$111,000.00 and is encumbered by  
senior lies securing claims which exceed the  
value of the Property.

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5. [14-30613](#)-B-13 DONALD/BROOKE HOBART  
JPJ-1 John Downing

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
12-11-14 [[22](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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| <b>The court's decision is to continue the Objection to [date] at [time].</b> |
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Specialized Loan Servicing. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.
2. Trustee is unable to fully assess the feasibility of the plan. According to Schedule I, Debtors' net income from rental property and/or operation of a business is \$3,000. The Debtor did not file a detailed statement showing gross receipts and ordinary and necessary

expenses.

Finally, Chapter 13 Trustee prays the Court enter an order denying confirmation of the Debtors' Plan and an order dismissing the case unless on or before January 27, 2015, Debtors files a new plan and all necessary and related motions including motion to value collateral and/or motions to avoid liens, properly serve the new plan and motion(s), and sets the motion(s) for hearing.

Although the Court is prepared to grant Debtors' Motion to Value the secured claim of Wells Fargo Bank, N.A. (serviced by Specialized Loan Servicing), the docket reflects that Debtors have not resolved Chapter 13 Trustee's second objection. Moreover, the docket does not reflect that Debtors have filed a new plan. However, because Chapter 13 Trustee provided Debtors with the January 27, 2015 deadline within which to resolve all aforementioned issues, the objection will be continued to **[date]** at **[time]**. Furthermore, if Debtors have not resolved Chapter 13 Trustee's second objection and filed a new plan before January 27, 2015, the case will be dismissed.

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

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

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

**IT IS ORDERED** that the Objection to confirmation the Plan is continued to **[date]** at **[time]**.

**IT IS FURTHER ORDERED** that if Debtors do not resolve Chapter 13 Trustee's second objection and file a new plan by or before January 27, 2015, the case will be dismissed.

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6. [14-30613](#)-B-13 DONALD/BROOKE HOBART  
MDE-1 John Downing

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
12-11-14 [[25](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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| <b>The court's decision is to overrule the Objection.</b> |
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Creditor, Wells Fargo Bank, N.A., filed its Proof of Claim for \$100,137.92, including arrearage in the amount of \$100,137.92. Creditor's claim is secured by the real property commonly known as 985 West Sierra Brooks Drive, Loyalton, California. Creditor opposes confirmation of the Plan on the basis that:

1. Debtors' plan does not provide for a retention of lien securing Creditor's claim, and the value of the property to be distributed is less than the allowed amount of Creditor's claim. 11 U.S.C. § 1325(a)(5)(B). Debtors' plan relies on the pending Motion to Value the secured claim of Wells Fargo Bank, N.A. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full. As of the filing of this objection, Debtors have not filed a motion to value.

The Court is prepared to grant Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. Therefore, the objection is overruled. However, because of the pending objection of Chapter 13 Trustee, 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 Creditor, Wells Fargo Bank, N.A., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and further ordered that because of the pending objection of Chapter 13 Trustee continued to [date] at [time], the Plan is not confirmed.

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7. [14-31013](#)-C-13 KARI ROBERTS  
DPC-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
12-23-14 [[17](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 23, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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| <b>The court's decision is to sustain the Objection.</b> |
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may not be Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor is above median income. Form 22C shows net disposable monthly income of \$3,916.66. Debtor's plan proposes to pay \$1,185 for sixty months, paying 100% to unsecured claims. Debtor's Schedule J shows net disposable income of \$5,320.38 per month, which is \$4,135.38 more than the proposed plan payment. Where the plan is effective on confirmation and unsecured creditors are not paid in full on that date, interest appears to be required to pay the present value to unsecured claims.

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

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

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

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

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

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**Also #9**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 29, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

Creditor, CashCall, Inc., on or about February 19, 2014, entered into a agreement with Debtors to provide Debtors with a loan agreement for a principal sum of \$16,810.29 with 21.70% interest. The loan was for the purchase of a used 2012 Chevrolet Impala 4-door Sedan LT. Pre-petition arrears amount to \$465.78, and post-petition arrears amount to \$1,086.36. The present value of Creditor's loan is \$17,028.45. Creditor opposes confirmation of the Plan on the basis that:

1. Debtors' plan does not provide Creditor with the present value of its secured claim under 11 U.S.C. § 1325(a)(5)(B). Debtors' plan proposes to modify Creditor's claim by decreasing the interest rate from 21.70% to 4.25%, and decreasing monthly payments from \$423.18 to \$315.90 over the 60 month life of the Plan. Creditor asserts that their vehicle lien should be treated as fully secured under the "hanging paragraph" in section 1325(a). Moreover, Creditor contends



that accounting for risk of default, lack of plan feasibility, undersecured nature of Creditor's claim and that fact that Debtors filed a bankruptcy on 9 months after purchasing the vehicle, the appropriate interest rate should be at least 15%.

2. Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).
  - a. Debtors' monthly net income is \$1,657.10. The Plan provides for total monthly payments of \$1,655, including the proposed payments of \$315.90 to Creditor. If the interest rate on Creditor's secured claim is 15%, the monthly payment is \$405.11, not \$315.90. If this increase were factored into the plan, the increase in monthly expenses would leave Debtors with negative net monthly income and an inability to make their Plan payments.
  - b. Debtors grossly understate the amount of the IRS debt to be paid through the plan. Debtors list two amounts owed to the IRS which are separately classified: Schedule F reflects total unsecured debt of \$33,256.71 and Schedule D reflects secured debt of \$2,380.11. Debtors improperly schedule the debt of \$33,256.71 as a non-priority unsecured claim, and the Plan only proposes to pay \$2,380.11 to the IRS as secured debt. If Debtors were to pay the IRS unsecured debt of \$33,256.71 over 60 months at the appropriate statutory interest rate, they would be unable to make all payments contemplated by the plan.
3. Debtors have not proposed their plan in good faith. 11 U.S.C. § 1325(a)(3). Debtors' proposed plan pays 0% to unsecured creditors and seeks to modify Creditor's loan less than 9 months after purchase of the vehicle. There are pre-petition arrears on the contract of \$465.48 and post-petition arrears of \$1,086.36 with a monthly payment of \$423.18 that became due on January 5, 2015. The substantial reduction of Creditor's interest rate to 4.25% was not proposed in good faith in light of the particular circumstances of Debtors and delinquent nature of the loan.

Creditor's first objection to confirmation of the Chapter 13 plan is on the basis that Debtor financed the purchase of a 2012 Chevrolet Impala and the proposed plan does not provide sufficient interest. Creditor correctly identifies that the applicable interest rate must be the prime-plus or formula rate according to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (treating *Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The Court agrees with the court in *Chachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate is common. Here, Debtor provided 4.25% in the proposed plan. The objection to

confirmation of the Plan is on the basis that Debtors' proposed interest rate is insufficient to account for the risk of default, the lack of plan feasibility, the undersecured nature of Creditor's claim, and the fact that Debtors filed bankruptcy only nine months after purchase of the vehicle. Instead, Creditor contends that the appropriate interest rate should be "at least" 15%. The objection on this basis is overruled, and the Court orders that the interest rate be adjusted to 4.5%.

The Creditor's second objection is on the basis that Debtors' proposed plan is not feasible, accounting for increased monthly payments to Creditor adjusting for a 15% interest rate, and accounting for the improper classification of a \$33,256.71 IRS claim as non-prioritized unsecured claim. Creditor's third objection asserts that the plan was not proposed in good faith. The Court notes that on January 2, 2015, the IRS filed a Proof of Claim for a wholly secured amount of \$37,862.66. The Court further notes that Debtors' plan does not provide for the secured debt of Citi Financial on a second deed of trust. Debtors list this debt as secured on Schedule D, and the debt should similarly be provided for in Class 2C of the plan. Because Debtors' proposed plan has not provided treatment for these secured amounts, the plan is not feasible and Creditor's objection is sustained on the second and third grounds.

Therefore, 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 Creditor, CashCall, Inc., 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

**IT IS FURTHER ORDERED** that the interest rate on Creditor's claim will be set at 4.50%.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 23, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Citibank, N.A., which is set for hearing on February 3, 2015. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.
2. Debtors' plan does not provide for the secured debt of Citi Financial on a second deed of trust. Debtors list this debt as secured on Schedule D, and the debt should similarly be provided for in Class 2C of the plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtor wishes to

conceal the proposed treatment of a creditor.

To the second objection, the Court further notes that Debtors have not provided for the secured debt of the IRS. On January 2, 2015, the IRS filed a Proof of Claim for a wholly secured amount of \$37,862.66. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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10. [14-22318](#)-C-13 AUDREY LYTLE  
[14-2325](#) MMW-1  
LYTLE V. BLUE SKY FUND, LLC

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
12-29-14 [[18](#)]

**Continued to January 27, 2015 hearing at 2:30 pm.**

11. [14-30418](#)-C-13 WILLIAM/PAMELA DUNBAR  
AFL-1 Ashley Amerio

MOTION TO CONFIRM PLAN  
12-9-14 [[19](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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  
December 9, 2014 is confirmed, and counsel for  
the Debtor shall prepare an appropriate order  
confirming the Chapter 13 Plan, transmit the  
proposed order to the Chapter 13 Trustee for

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

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

1. The Notice and Amended Notice state that the plan to be confirmed was filed on October 14, 2014, then the actual plan subject to the instant motion to confirm was filed on December 8, 2014. The Trustee is amenable to confirmation once the correct plan is identified.

**DISCUSSION**

The court's decision is to deny the Motion to Confirm the Plan. The hearing directs all parties to an incorrect document and Debtor has not submitted an amended notice of hearing indicating which plan is subject to the instant motion.

While the plan likely complies with the applicable provisions of Chapter 13 of Title 11, Debtor did not comply with the notice rules.

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



holding that:

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

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

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

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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  
December 16, 2014 is confirmed, and counsel  
for the Debtor shall prepare an appropriate  
order confirming the Chapter 13 Plan, transmit  
the proposed order to the Chapter 13 Trustee

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

\*\*\*\*

14. [14-31229](#)-B-13 FLOYDETTE JAMES  
EWV-59 Eric Vandermey

CONTINUED MOTION TO VALUE  
COLLATERAL OF WELLS FARGO BANK,  
N.A.  
12-12-14 [[21](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 12, 2014. Twenty-eight days' notice is required. This requirement has been met.

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

|   |
|---|
| <b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b> |
|---|

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1752 Beale Circle, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$359,800 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 \$396,046. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$27,352. 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 1752 Beale Circle, 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 \$359,800 and is encumbered by senior liens securing claims which exceed the value of the Property.

15. [11-32430](#)-C-13 ROOSEVELT/RAULETTE  
BLG-9 MCCLINTON  
Chad Johnson

MOTION TO MODIFY PLAN  
12-18-14 [[124](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. Thirty-five days' notice is required. That requirement was met.

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

|  |
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| <b>The court's decision is to continue the Motion to Confirm to February 24, 2015 at 2:00 p.m.</b> |
|--|

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

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

1. Debtors have filed Amended Schedules I and J in support of the proposed increase in their plan payment from \$2,637 to \$3,147. While Debtors' income has increased, their monthly expenses have increased as well. However, Debtors may have more income available.
  - a. Debtors' declaration explains that their son, wife, and three children are now living with them and saving to buy a home of their own. The amended Schedule J lists Debtors' daughter, two

grandchildren, Debtors' son, wife, and three grandchildren as dependents. Debtors previously listed only Debtors' dependents as daughter and two grandchildren. Debtors do not indicate whether adult children are employed or financially contributing to household, though it appears that Debtors' son is saving to purchase a home.

- b. Debtors' prior Schedule I filed January 13, 2012, stated Debtor had one year left on a 401K loan with a balance of \$1,521.57 as of March 31, 2011. Debtors' loan payments at that time per Schedule I were \$162.50. Debtors' amended Schedule I filed December 18, 2014 nearly three (3) years later continues to reflect a monthly 401K loan payment. Debtors' currently monthly loan payment is \$154.05. Trustee is uncertain if Debtors continue to paying on prior 401K loan or if they borrowed additional funds.

#### **DEBTORS' RESPONSE**

Debtor's request that the hearing on the Motion be continued to February 24, 2015 because Debtors are in the process of gathering the necessary documents to address the Trustee's objection regarding their updated budget.

The court is amenable to granting the continuance and the hearing is continued to February 24, 2015 at 2:00 p.m.

The court shall issue a minute order 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 Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Confirm is continued to February 24, 2015 at 2:00 p.m.

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16. [14-29430](#)-C-13 JOHNNIE REECE  
DPC-1 Richard Jare

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
10-29-14 [[19](#)]

\*\*\*\*\*

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 29, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

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

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

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

2. Trustee is not certain that Debtor can make the payments



required under 11 U.S.C. § 1322(a)(6). Schedule I reflects that Debtor is a student and self-employed part-time. Debtor lists \$2,600 gross income under wages and a deduction of \$800.00 for "Pay subcontractors to do much of the work," leaving combined monthly income of \$1,800.

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

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

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

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

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

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

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

#### **DEBTOR'S OPPOSITION**

On December 19, 2014, Debtor filed a reply to the Chapter 13 Trustee's objection. Moreover Debtor has filed an amendment to Schedules B, I, and J.

1. Debtor did not file federal or state tax returns in 2012 or 2013 because most of Debtor's income was derived from non-taxable Pell Grants, thus Debtor did not have sufficient taxable income. Debtor provided a copy of 2011 federal income

tax return to Trustee. Debtor only signed the copy provided to the IRS. Thus while the copy provided to Trustee was not signed, it was a true copy of what was filed.

2. Debtor can afford plan payments.
  - a. Debtor's employment situation has changed. Debtor is no longer self employed, and in November accepted a position as nursing home staff at Oceanside Living in Fort Bragg. The employer's address is 535 East Chestnut Street, Fort Bragg, California. Debtor's gross pay is \$1000 biweekly, and after deductions, Debtor's net pay is \$860 biweekly.
  - b. Debtor is winding down Ethereal New Media business, and in the foreseeable future, expects close to \$0 income. Debtor expects a \$150 payment from a customer in January, and thereafter Debtor does not expect any significant income from this business.
  - c. Debtor is no longer pursuing an education and is no longer a student.
3. Debtor's employer in Fort Bragg provides housing. Debtor does not pay rent. Debtor's household furnishings being stored at 4815 Waterbury Way, Granite Bay, California. The owners of the Granite Bay residence are his God-parents who have income and are not concerned about storing Debtor's property.
4. Debtor's obligation to Creditors Robert and Susan Stultz is unsecured. Should an executory contract remain, the Chapter 13 Plan properly omits its adoption, and is therefore deemed "rejected." The classification of whether this particular obligation is unsecured is a legal question.
5. Debtor's valuation of the dog at \$0 is correct. Debtor paid \$300 "some time ago" and the purchase value of the dog has diminished.
6. Debtor's valuation of two horses at \$20,000 is correct. Horses decline in value dramatically if they are not constantly cared for and ridden. The horse investment is a relic of a previous marriage.
  - a. Debtor purchased four (4) horses in two (2) transactions in 2012-13. Debtor paid seller \$60,700 in a cash down payment on a purchase agreement toward a total purchase price of \$103,500. \$42,800 was still owing. In a second transaction, as shown in Statement of Financial Affairs question 10, Debtor engaged in horse trading with the seller, Rainbow Equus Meadows, whereby "Previously in possession of 4 Hanavarian Horses under a contract of sale. Traded the horses name Essence and Petula, in exchange for the Registration Papers for horses Lilly and Shirah."
7. Debtor has entirely utilized the CCP § 703.140(b)(5) exemption. Trustee indicates in his opposition that the plan

pays to Class 7 not less than \$1998. The Schedules require that \$626.25 be paid to Class 7 after factoring in a Chapter 7 administration fee of \$208.75.

#### **CREDITOR'S REPLY**

Creditors, Bob and Sue Stultz, have filed a reply in support of Trustee's objection to confirmation. Trustee's objection raises issue with Debtor's Schedule G—an executory contract with Creditors to sell a half interest in a horse, but that Debtor did not indicate if the debt is secured or unsecured. In his opposition, Debtor contends that the obligation is unsecured.

Creditors clarify that Creditors purchased from Debtor a 50% interest in a horse and entered into a co-ownership agreement with the Debtor to jointly manage the horse and divide all associated costs and earnings/proceeds from the horse. Additionally, Creditors paid Debtor \$20,000 purchase price. Subsequently, Creditors learned that Debtor may not have owned the horse at the time of purchase. Creditors requested their money back.

Debtor now acknowledges that he does own the horse, yet has not apprised the Court of the full extent of his dealings with Creditors or the nature of his interest in the horse (i.e. co-ownership). Moreover, Debtor has not accounted for his receipt of \$20,000 from Creditors and has not identified any expenses associated with caring for the horse (including food, board, training, and vet bills).

#### **DISCUSSION**

Debtor has filed an opposition to Trustee's Objection to Confirmation, resolving many of the issues raised by Trustee. However, Creditor has raised additional concerns, showing that Debtor's clarification of the executory contract with Robert and Susan Stultz is not a clear-cut as Debtor may have alluded. Instead, Creditors have raised that there may be as much as \$20,000 in undisclosed assets and that Debtor has not sufficiently accounted for additional expenses (i.e. horse care) under the plan. Debtor has not responded to Creditors. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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17. [11-33335](#)-C-13 KEVIN/CATHERINE MATLOCK  
DPC-4 Chad Johnson

OBJECTION TO CLAIM OF SOLANO  
COUNTY TAX COLLECTOR, CLAIM  
NUMBER 17  
12-1-14 [[71](#)]

**Also #18**

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**Tentative Ruling:** The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 1, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). At the hearing -----.

**The Objection to Claim of Solano County Tax Collector is overruled.**

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Solano County Tax Collector ("Creditor"), Proof of Claim No. 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$7,156.26. Objector asserts that the claim is filed as an administrative claim requiring a motion. Trustee does not oppose the allowance of the claim provided the matter is set for a hearing by the Claimant or the Debtors propose a motion to confirm and a modified plan.

The court docket reflects that Debtors have file a motion to confirm second modified plan filed on January 20, 2015. The Modified Plan provides for the claim of the Solano County tax collector in Class 2A. Thus, the

Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Solano County Tax Collector, Creditor filed in this case by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 17 of Solano County Tax Collector is overruled and the claim is allowed in its entirety.

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18. [11-33335](#)-C-13 KEVIN/CATHERINE MATLOCK  
DPC-5 Chad Johnson

OBJECTION TO CLAIM OF  
BENEFICIAL FINANCIAL I, INC.,  
CLAIM NUMBER 16  
12-15-14 [[79](#)]

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**Tentative Ruling:** The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 15, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). At the hearing -----.

|   |
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| <b>The Objection to Claim of Beneficial Financial I, Inc. is overruled as moot.</b> |
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David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Beneficial Financial I, Inc. ("Creditor"), Proof of Claim No. 16 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$5,316.83. Objector asserts that the proof of claim is filed as secured. Debtor cannot file a claim under section 1307 for taxes. Additionally, there are no supporting documents. Finally, this claim is post-petition and is not provided for as secured under the plan.

On January 9, 2015, Debtors withdrew Claim 16. Therefore the Objection will be overruled as moot.

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

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

The Objection to Claim of Beneficial Financial I, Inc., Creditor filed in this case by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 16 of Beneficial Financial I, Inc. is overruled as moot.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$803.44 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$384.48 is due on January 25, 2015. Debtor has paid \$350 into the plan to date.
2. Debtor cannot make the payments call for under the plan or comply with the plan. 11 U.S.C. § 1325(a)(4).
  - a. Section 6.01 of the plan states in part "\$104,909.14 pre-petition arrearage and \$4,235 monthly contract installment set forth in Class 1." However, Class 1 of Debtor's amended plan does not list any creditor, collateral description, amount, or monthly contract installment amount.
  - b. Section 6.02 of the plan lists the creditor and collateral description, but does not list the amount or monthly contract installments.
  - c. Section 6.03 of the plan states that the "Debtor has in process a



HAMP Application for modification of the loan upon which the Wells Fargo Home Mortgage secured claim."

The section does not indicate when an application was made, what specific terms were sought other than requesting the arrearage be waived or incorporated in a new principal amount to be amortized over the life of the loan, or sufficient information for the Court to determine if any likelihood exists of the approval of a loan modification.

Moreover, it states "Wells Fargo Home Mortgage shall be paid \$250.00 a month as an adequate protection payment." It does not appear that a payment of \$250 is an adequate protection payment for Wells Fargo-the regular monthly contract installment may be \$4,235 and the real property is valued at \$608,868.

Where the additional provisions do not require either the monthly contract installment payment of \$4,235 or the amount needed to cure arrearage of \$2,185.61, the additional provisions effectively hide from the Court what the Debtor will be doing with \$6,420.61 per month. The prior plan called for these monthly payments and Debtor's Schedules I and J indicated that if a loan modification was approved, "debtor will increase her hours at work and her family will provide the necessary financial support."

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

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

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

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

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

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (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.**

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
16, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if

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

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21. [11-42349](#)-C-13 SCOTT/ELIZABETH  
DPC-1 NETHERCOTT  
Eric Schwab

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
12-16-14 [[54](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 16, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Objection to Debtors' Claim of Exemption is sustained.**

The Chapter 13 Trustee objects to Debtor's exemption in post-petition net settlement funds from a medical malpractice action. Debtor exemption 100% of the value of the claim, or \$193,191, pursuant to California Code of Civil Procedure § 704.170.

The Trustee objects on the grounds that the Debtor has not supplied additional information, such as whether the award is payable periodically, or how the award is necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. CCCP §§ 704.140(d) & 704.140(b).

A party-in-interest may file an objection to the list of property claimed as exemption within 30 days after the meeting of creditors held under § 341 is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. FRBP 4003.

Here, the Debtors filed an Amended Schedule C on December 1, 2014, included an exemption of \$193,191 for post-petition net settlement funds from a medical malpractice action (*Nethercott v. Kaiser*). The exemption was claimed under CCP § 704.140.

Section 704.140 states that, except as to subdivisions (c) and (d), an award of damages arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and spouse and the

dependents of the judgment debtor. Subsection (c) states that this rule does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made. Further, section (d) states that, where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of hearings under chapter 5.

As the Trustee pointed out, the court cannot determine whether the exemption was properly claimed because it lacks information concerning the support needed for debtor and whether the award is payable periodically. Therefore, the objection is sustained and the exemption is disallowed.

The court shall issue a minute order 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 Debtors' Claim of  
Exemption filed by the Chapter 13 Trustee  
having been presented to the court, and upon  
review of the pleadings, evidence, arguments  
of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is  
sustained and the exemption of \$193,191 for  
post-petition net settlement funds from a  
medical malpractice action (*Nethercott v.*  
*Kaiser*) claimed under CCP § 704.140 is  
disallowed.

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22. [14-30649](#)-C-13 CHRISTOPHER TAIJERON  
AF-3 Arasto Farsad

MOTION TO CONFIRM PLAN  
12-7-14 [[39](#)]

**CASE DISMISSED 11/26/14**

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

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23. [14-31751](#)-B-13 CULVER PIERRE  
SDB-1 Scott de Bie

CONTINUED MOTION TO VALUE  
COLLATERAL OF WELLS FARGO BANK,  
N.A.  
12-11-14 [8]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 11, 2014. Twenty-eight days' notice is required.

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

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| <b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b> |
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 102 Harvard Avenue, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$203,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$229,480. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$52,951.68. 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 102 Harvard Avenue, 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 \$203,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 31, 2014. 28 days' notice is required. That requirement was met.

The Motion to Convert or Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

|   |
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| <b>The court's decision is to grant the Motion to Dismiss or Convert and convert the case to one under Chapter 7 of Title 11.</b> |
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Creditor, Tri Counties Bank, moves that Debtor's case either be converted to Chapter 7 or dismissed, based on the following:

1. Debtor is causing unreasonable delay that is prejudicial to creditors by not timely proposing and confirming a feasible chapter 13 plan. 11 U.S.C. § 1307(c)(1).

Creditor argues that since the filing of the case in February 2014, Debtor has not proposed a feasible plan despite three separate attempts. Debtor currently has no plan on filed.

Creditor states that Debtor's last proposed plan provided for payment to creditors from sale proceeds of much of Debtor's non-exempt real and personal property assets. Creditors argues; however, that Debtor is not selling his assets in a timely manner and interest is accruing on his secured obligations. Debtor closed his concrete business in August 2013 but has yet to sell any of the equipment associated with the business since that time.

2. Debtor filed the instant Chapter 13 case in bad faith. Creditor asserts that Debtor filed his case in an effort to liquidate his assets. After ten months in bankruptcy, Debtor has only sold one asset. On May 23, 2014, Debtor filed a motion to sell personal property, that was denied on June 3, 2014. A second motion to sell was filed on June 11, 2014 and denied on June 24, 2014. On July 17, 2014, a third motion to sell was filed and granted on August 5, 2014.

Creditor asserts that Debtor did not appear at the originally scheduled meeting of creditors, did not file tax returns, and did not disclose all his assets in his schedules.

#### **CHAPTER 13 TRUSTEE RESPONSE**

In response to Creditor's motion, the chapter 13 Trustee provides the following for the court's consideration:

1. Debtor is \$250.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$150.00 is due on January 25, 2015. The plan calls for \$150.00 for 59 months beginning March 25, 2014; therefore, 10 payments have come due. The total amount due under the plan is \$1,500 and Debtor has paid \$1,250 to date.

Trustee informs the court that Debtor has also paid a \$68,000 lump sum payment, which was received from the sale of an asserts and is being held by the Trustee, per court order.

2. Debtor has not filed a plan, despite the case being filed in February 2014. Trustee argues that the delay in filing a new plan since the date the most recent motion to confirm was denied (December 16, 2014) is unreasonable.

#### **DEBTOR'S OPPOSITION**

Debtor argues the following in opposition to the Motion:

1. Tri Counties Bank is the only creditor that will benefit from conversion or dismissal. It has not demonstrated that, if converted, the property is more likely to sell faster or that the Chapter 7 Trustee would obtained higher sale prices for the properties, benefitting all creditors.
2. The majority of the delays have been caused by creditor objections to confirmation and refusal to offer language that would satisfy its concerns with the plan.
3. Debtor refers the court to an attached Exhibit from the real estate broker that is dated January 12, 2015, and, according to Debtor, exhibits a newly formed and more robust sales approach "going into action at present." (Dkt. 257).

#### **DISCUSSION**

On January 20, 2015, Debtor filed a Third Amended Chapter 13 Plan (Dkt. 263) and Motion to Confirm (Dkt. 260).

The Third Amended Plan differs from the Second Amended plan in that the claim of Wells Fargo Home Mortgage, secured by 745 Alta Powerhouse Road, Alta, California was moved from class 2 to class 4 and is now listed as a "short sale." There is no sale order entered for the property and there is no pending motion to sell the property on the docket.

The other substantial differences are listed in Section 6 "Additional Provisions." Instead of proposing to sell various property 12 and 24 months following the filing date, the Third Amended Plan proposes to sell personal property items by June 1, 2015 and real properties by June 1, 2016.

Pursuant to 11 U.S.C. § 1307(c), on the request of a party in interest and after notice and a hearing, the court may convert a Chapter 13 case to Chapter 7 or dismiss a Chapter 13 case, whichever is in the best interests of creditors and the estate.

Here, the court does find cause to convert or dismiss the case. The primary basis for the court's decision is the proposal of a Third Amended Plan that is not confirmable. The Third Amended Plan depends on the sale of six (6) real properties, by June 1, 2016. There are no motions to sell pending for any of the real properties, the Debtor has not provided the court with statements of intent to purchase any of the properties, and the court is not convinced that any of the properties will sell within that time, as it was Debtor's original goal to sell all property within 12 months of filing the case and within the past eleven months only personal property has sold.

Debtor provided a property update from his real estate broker describing the status of each property (Exh. 257). For the majority of the properties, the broker suggests lowering the sale value because of issues with the quality of the land, debris on the land, leases on the land, and joint ownership. For the property on Knorr Swiss, the recommendation is to follow up with inquiries, mail out additional mailings, and not lower the price until all leads are exhausted. The court queries why the leads are not exhausted after almost a year of the case pending? On balance, the court is not convinced that this documents demonstrates that the properties will sell within a reasonable time, given that the properties were slated to be sold by February 2015, as recently as October 2014, in the Second Amended Plan.

The court does not find that the Third Amended Plan presents a feasible and confirmable reorganization because the funding for the plan is insufficiently certain. The court further finds that the Debtor's inability to present a confirmable plan to the court is causing delay to creditors and is prejudicing creditors with secured interests in Debtor's property. Pursuant to 11 U.S.C. § 1307(c)(1), the court finds there is cause to convert or dismiss the case.

The court specifically finds cause to convert the case as, per Debtor's many plans, there is sufficient equity in Debtor's non-exempt property to pay 100% of unsecured claims

Cause exists to convert this case. The motion is granted and the case is converted to one under Chapter 7 of Title 11.

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

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

The Motion to Dismiss or Convert, 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 the Motion to Convert is granted and the case is converted to one under Chapter 7 of the bankruptcy code.

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2014. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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.**

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
19, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The Additional Provisions of Debtor's modified plan state:

Debtor shall submit to the trustee \$1,450.00 per month commencing the first month of the plan, except for the arrearage that accumulated as of November 17, 2014 in the amount of \$1,800.00 due to a temporary interruption in the receipt of monthly support from my former spouse. The support has again commenced by wage

assignment, and his missing payments are being collected by Solano County Child Support Services. This missing \$1,800.00 will be submitted to the trustee in a lump sum during the monthly payment following the month of receipt, but no later than the 60 months of the Plan.

The Trustee is uncertain how to administered the plan payment as proposed. It would appear Debtor is proposing a plan payment of \$1,450 per month, but carry the \$1,800 delinquency throughout the life of the case to be submitted at some unspecified point in the future, but no later than the 60<sup>th</sup> months of the plan. To date, Debtor is delinquent \$1,800 under the confirmed plan with a payment of \$1,450 per month.

2. Trustee is uncertain whether Debtor has the ability to make the plan payment. 11 U.S.C. § 1325(a)(6). Debtor states in the declaration that a major portion of monthly income is received from a former spouse in the amount of \$1,750 via wage garnishment. Debtor's previous declaration (Dkt. 37) states that Debtor's son moved out and Debtor is no longer entitled to her spouse's SSI income and that the support payment was reduced from \$1,750 per month to \$1,000 per month. The prior declaration also states that Debtor rented out the studio in her home and is received \$450 per month in rent, but Debtor has not filed an updated Schedule I including this change.

Debtor's previous declaration also indicates that Debtor's electricity and heat have increased from \$30.00 per month to \$80.00 per month, home maintenance increased from \$79.00 per month to \$150.00 per month, and food increased from \$100 to \$300 per month. Debtor has not filed an updated Schedule J incorporating these changes.

3. Debtor's declaration is defective in that it does not comply with 28 U.S.C. § 1746. The language in the declaration is equivocal in nature.
4. Debtor's counsel has not signed or dated the plan.

Debtor has not responded to the Trustee's objections, each of which remain outstanding. 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 Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review



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

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

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\*\*\*\*\*

**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. Thirty-five days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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  
December 16, 2014 is confirmed, and counsel  
for the Debtor shall prepare an appropriate  
order confirming the Chapter 13 Plan, transmit  
the proposed order to the Chapter 13 Trustee

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

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2014. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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.**

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
22, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the

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

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Robin Gordon ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,389.71 a month to \$1,772.74 a month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2% to 4.125% over the next 30 years.

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

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 Robin Gordon 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 court authorizes Robin Gordon ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 240 Stone Valley Circle, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 111.

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30. [14-30059](#)-C-13 MONICA BURTON  
DPC-1 Michael Lee

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-20-14 [[26](#)]

**Also #31**

\*\*\*\*

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee opposes confirmation on the following basis:

1. Debtor seeks to value the secured claim of Green Tree Servicing, LLC. The Motion to value the claim was heard and denied at the hearing on November 18, 2014. Unless Debtor files and receives approval for a new motion, she cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

Debtor filed a new Motion to Value the secured claim of Green Tree Servicing, LLC, to be heard on January 27, 2015. As a result of this Motion, the court continued the hearing on the Objection to January 27, 2015.

At the hearing on January 27, 2015, the court is prepared to deny



the motion to value for inadequate identification of creditor and; therefore, inadequate service. The Objection remains unresolved and is sustained. The plan is not confirmed.

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

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

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

**IT IS ORDERED** that Objection is sustained and the Chapter 13 plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

|  |
|--|
| <b>The Motion to Value secured claim of Green Tree Servicing, LLC is denied without prejudice.</b> |
|--|

#### **IDENTITY OF CREDITOR**

The court cannot correctly identify the proper creditor subject to this motion. Debtor requests the court value the secured claim of Green Tree Servicing, LLC; however, Green Tree Servicing, LLC is not the lender identified on the attached Note or Deed of Trust. The Deed of Trust submitted in support of the Motion states that the lender is "BNC Mortgage, Inc., A Delaware Corporation." Exh. A, Dkt. 36. The Note attached to the Motion states that the Beneficiary is "Beneficial California Inc." Exh. B, Dkt. 36. Attached as Exhibit C in Docket 36 is a statement from Green Tree Serivicng, LLC, designating itself as "Asset Receivables Management." This designation indicates to the court that Green Tree Servicing, LLC is the servicer of this loan and not the lender.

The court cannot identify the proper creditor and cannot determine whether the correct creditor was served with the instant motion. The court refuses to alter the legal rights of an entity without confirmation that the entity was adequately served notice and given an opportunity to respond. The Motion is denied without prejudice.

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

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

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

**IT IS ORDERED** that the Motion is denied without prejudice.

\*\*\*\*\*

32. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO CONFIRM PLAN  
PLC-4 IRMA CAMPOS 12-16-14 [[52](#)]  
Peter Cianchetta

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

1. The plan relies on the pending Motion to Value the secured claim of Ocwen Loan Servicing/Deutsche Bank National Trust Company, which was denied at the hearing on January 13, 2015. As the Motion was denied, Debtor's plan lacks sufficient monies to pay the claim in full and should be denied confirmation.

A review of the docket confirms the Motion to Value the secured claim of Ocwen Loan Servicing/Deutsche Bank National Trust Company was denied at the hearing on January 13, 2015. As a result, the Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

\*\*\*\*

33. [12-22664](#)-C-13 CYNTHIA MCDANIEL  
PGM-1 Peter Macaluso

MOTION TO DISALLOW JACOBY &  
MEYERS, LLP/MACEY & ALEMAN DBA  
LEGAL HERPERS, PC., ATTORNEY  
FEES AND APPROVAL OF NO LOOK  
FEES REMAINING DUE TO NEW  
COUNSEL  
12-29-14 [[24](#)]

**Final Ruling:** The Debtor having filed a Notice of Withdrawal on January 20, 2015, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2014. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 August  
27, 2014 is confirmed, and counsel for the Debtor  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to  
the Chapter 13 Trustee for approval as to form,  
and if so approved, the Chapter 13 Trustee will

submit the proposed order to the court.

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35. [14-31068](#)-C-13 JEFFERSON/PRISCILLA GRACE OBJECTION TO CONFIRMATION OF  
DPC-1 BAGALAY PLAN BY DAVID P. CUSICK  
Harry Roth 12-23-14 [[25](#)]

\*\*\*\*\*

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 23, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

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

1. The plan relies on the pending Motion to Value the secured claim of Merchant Acceptance, which was set for hearing on January 13, 2015. If the Motion is not granted, the plan lacks sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a)(6).
2. Class 2 of the Plan lists secured debts owed to GM Financial for a 2012 Jeep and Merchant Acceptance for a Kirby Vacuum. The plan does not indicate monthly dividends for these creditors. According to the Trustee's calculations, GM Financial must be paid \$418.00 per month to pay the claim within 60 months at 4.5% interest and Merchant Acceptance

must be paid \$15.00 per month as that is the smallest amount the Trustee can disburse each month. The Trustee is amenable to provisions providing for these dividend amounts in the Order Confirming the Plan.

3. In Section 20.6 the plan proposes to pay counsel \$2,150 through the plan pursuant to LBR 2019-1(c); however, the Disclosure of Compensation of Attorney for Debtors lists in item 7 that the attorney services do not includes some services required under the Local rules, such as judicial lien avoidances and relief from stay actions. The Trustee perceives this as the attorney opting out of the Local Rules and will oppose any fees being granted without the filing of a Motion for Compensation.

4. Debtors' statement of financial affairs indicates the following information for income:

\$1.00 2013: Wife Cache Creek Casino

\$1.00 2014 YTD: Husband Comcast of California

\$1.00 2013: Husband Comcast of California

Debtor testified at the First Meeting of Creditors on December 12, 2014, that these amounts are incorrect.

At the hearing on January 13, 2015, the court denied the Motion to Value without prejudice. Debtors did not respond to the Trustee's objections and each of them remain outstanding. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

\*\*\*\*\*

\*\*\*\*\*

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation based on the following:

1. The Plan Debtor is seeking to confirm was denied confirmation on September 30, 2014 (Dkt. 29). The Debtor is proposing to confirm the same plan and has not addressed the Trustee's original objections to confirmation.
2. The Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's motion to value the secured claim of Ocwen Financial Services was heard and denied at the hearing on December 16, 2014. Debtor has not re-set the hearing date on the Motion.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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37. [14-30874](#)-C-13 RANDY WILLIAMS  
DPC-1 Mary Ellen Terranella

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-17-14 [[14](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 17, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. The plan may not reflect Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor is over median income and Form B22C shows negative disposable income of (\$417.70). Trustee objects to Debtor's deduction on line 30, where Debtor deducts \$5,434 for tax withholding, which is approximately 37% of Debtor's reported gross wages on Schedule I. When questioned about the withholding at the 341 Meeting, Debtor indicated that he had been advised by an accountant to withhold this amount due to prior year's tax obligation. It appears; however, based on the percentage of income being withheld, that the Debtor is over withholding and may be eligible to receive a tax refund

each year. The Trustee requests Debtor be ordered to turn over any future tax refunds to the Trustee to be contributed toward general unsecured claims as an additional payment into the plan each year. Trustee also asks that the Debtor turn over annual tax returns and updated pay advices at the time of the tax refund.

Debtor deducts \$260 per month for "telecommunication." Debtor has not provided a breakdown of the expense to show eligibility for the deduction.

Debtor deducts \$300 for education expenses for dependent children under 18. This line requires counsel to provide Trustee with documentation of the expense and explain why it is reasonable and necessary and not already accounted for in IRS standards. Debtor has not provided documentation or explanation.

Debtor deducts \$500 for actual and necessary housing costs in excess of the allowance without further explanation or documentation to support to deduction.

2. Debtor lists on Schedule I and Form B22C a deduction of \$1,683 for child support for his children, aged 9 and 16. It appears the support will be reduced when his oldest daughter turns 18 and graduates high school; however, Debtor has not proposed to increase his plan payment or provide the amount the support will change at that time.

Debtor has not responded to the Trustee and each of the above objections remain unresolved. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

**IT IS FURTHER ORDERED** that Debtor turn over any future tax refunds to the Trustee and that Debtor turn over annual tax returns and updated pay advices at the time of the tax refund.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2014. Forty-two days' notice is required. That requirement was met.

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

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

**PRIOR HEARING**

The court previously heard this matter on November 4, 2014. The matter was continued to December 9, 2014 for Debtor to submit a declaration resolving the Trustee's objections. Debtor did not submit a declaration at the continued hearing, but the court granted the Debtor a further continuance.

Debtor filed a supplemental declaration on January 16, 2015. It is incorporated below.

**SUMMARY OF OBJECTION**

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor's plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor testified at the 341 Meeting that Debtor receives \$1,500 per month in rental income. This income is not included on Schedule I.
2. Debtor and Debtor's spouse are both self-employed. Schedule I,

line 8 lists net income of \$1,000 for Debtor and \$5,000 for Debtor's spouse. Line 8a requires an attached statement for each property or business, showing gross receipts, expenses, and total monthly net income. Debtor did not file the attached statement and it is not clear to the Trustee if the \$6,000 on Schedule I is gross or net income.

3. Debtor did not select the correct box in section 2.06 of the plan, which should be marked as "complying with LBR 2016-1(c)" or filing a motion for attorneys' fees.
4. The plan does not pass Chapter 7 Liquidation. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$21,288.00 and Debtor is proposing a 0% dividend to unsecured creditors. Debtor is married and Debtor's spouse is not included in the bankruptcy. Debtor has not filed a spousal waiver for use of the California State Exemptions under C.C.P. § 703.140.
5. Trustee is uncertain whether Debtor's plan has been proposed in good faith or if it reflects Debtor's best efforts. 11 U.S.C. §§ 1325(a)(3) & 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line 3b, Debtor listed ordinary and necessary business expenses totaling \$5,721.33. Debtor is over the median income and has not properly completed the CMI.

#### **DEBTOR'S RESPONSE**

Debtor filed Amended Schedules I and J that allegedly more clearly and properly reflect income and expenses of Debtor. Debtor and her husband operate as independent contractors, she is a beautician and her spouse is operates a pool cleaning business.

Debtor asserts that the Plan was filed and inadvertently did not include checking the box concerning LBR 2016-1(c). Debtor clarifies that the attorneys' fees in the plan were incorrect and should be listed at \$1,810, as shown on the Disclosure of Attorney Compensation and the Rights and Responsibilities form. Debtor requests these items be clarified in the order confirming the Chapter 13 plan.

Debtor is unclear on the liquidation objection and argues there is no non-exempt equity, per Schedule C. Further, Debtor filed the spousal waiver on October 21, 2014.

Debtor filed Amended Form B22C on October 21, 2014, demonstrating that Debtor passes the means test.

#### **PRIOR RULING**

On October 21, 2014, Debtor filed Amended Schedules I & J. Schedule I includes income listed on Line 8a of \$1,000 for Debtor and \$4,100 for Debtor's spouse. Debtor still did not attached a statement for the properties and/or businesses. Schedule I does not address the \$1,500 in rental income testified to at the 341 Meeting.

While Debtor did filed the spousal waiver, appears to have remedied the Trustee's concerns regarding attorneys' fees, and filed an Amended Form B22C, Debtor still lacked sufficient evidence supporting Schedule I. Therefore, the court continued the motion to permit Debtor to submit a supplemental



declaration.

## **DEBTOR'S SUPPLEMENTAL DECLARATION**

In the supplemental declaration, Debtor provides:

1. Income from Debtor's non-filing spouse is \$4,100, which includes pool business net income and net rental income of \$600 per month from a rental house. The property is rented at a rate of \$1,500 and subject to a monthly mortgage payment of \$900.
2. Debtor asserts that monthly net income in her household is \$6,000 and with expenses of \$4,780, net disposable income totals \$1,220 and Debtor is proposing plan payments of \$1,220.

## **DISCUSSION**

Despite Debtor's efforts, the court is still unclear on the figures regarding Debtor's income. Debtor's supplemental declaration states that Debtor's non-filing spouse draws \$4,100 and the rental property draws \$600 net income per month. Debtor states that net monthly income for the household is \$6,000, which leaves the court to infer that Debtor's contribution consists of \$1,300 (the difference between \$6,000 and (\$4,100 + \$600)).

The most recently Amended Schedule I states that Debtor's income is \$1,000 and Debtor's non-filing spouse income is \$4,100. There is no mention of rental income; however, it appears the rental income is assumed as part of the non-filing spouse's contribution. The Currently Monthly Income details for Debtor's spouse state that net income for his pool business is \$3,500, and not \$4,100; however, adding in \$600 from the rental income would total the net income for non-filing spouse at \$4,100.

Schedule I states net monthly income totals \$5,100, an amount supported by income reported on Schedule I and supported by the supplemental declaration concerning non-filing Debtor spouse's contribution. Schedule J lists expenses of \$3,880, leaving net disposable income of \$1,220.

Debtor's Supplemental Declaration states that net monthly income totals \$6,000 and that Debtor's non-filing spouse and the rental property provide net income for \$4,100. The Declaration makes no statement regarding Debtor's income. The Declaration states that monthly expenses total \$4,780, leaving \$1,220 in net disposable income.

Whether the court looks at Schedules I & J or at the Declaration, the end result is \$1,220 in monthly disposable income, but the path to reaching that number is very different. It almost seems like one set of numbers is fabricated to achieve a monthly net disposable income that matches the other set of numbers. The court cannot determine whether the Debtor's representations regarding income are genuine and is not certain that Debtor has sufficient income to fund the plan as proposed.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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**Final Ruling:** No appearance at the January 27, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 20, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Juan Coleman ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,675.98 a month to \$905.17 a month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 2.00%.

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

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 Juan Coleman 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 court authorizes Juan Coleman ("Debtor") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 510 El Mar Court, Suisun City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 107.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation based on the following:

1. The priority claim of the Franchise Tax Board in the amount of \$3,891 is not provided for in the plan. 11 U.S.C. § 1322(a)(2).
2. The secured debt of the Franchise Tax Board in the amount of \$14,643 is not provided for in the plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that the Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.
3. According to the Trustee's calculations, the plan will take 72 months to pay the FTB's claim, which exceeds the permitted 60 months under 11 U.S.C. § 1322(d).

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

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

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

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

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

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41. [14-31992](#)-B-13 KREGG RAY  
SJS-1 Scott Sagaria

CONTINUED MOTION TO VALUE  
COLLATERAL OF WELLS FARGO BANK,  
N.A.  
12-15-14 [[9](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 15, 2014. Twenty-eight days' notice is required.

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

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| <b>The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.</b> |
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 396 Randgren Way, Folsom, California. The Debtor seeks to value the property at a fair market value of \$354,041 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 \$366,218. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$29,896. 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 396 Randgren Way, Folsom, 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 \$354,041 and is encumbered by senior liens securing claims which exceed the value of the Property.

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42. [11-39194](#)-C-13 JASON WRIGHT  
MOH-1 Michael Hays

MOTION TO AVOID LIEN OF  
CITIBANK (SOUTH DAKOTA), N.A.  
12-23-14 [[81](#)]

**Also #43**

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on December 23, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$21,527.77. The abstract of judgment was recorded with Butte County on July 16, 2011. That lien attached to the Debtor's residential real property commonly known as 752 East 7th Street, Chico, 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 \$237,500 as of the date of the petition. The unavoidable consensual liens total \$284,553 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., Butte County Superior Court Case No. 149057, Document No. 2011-0022998, recorded on July 16, 2011, with the Butte County Recorder, against the real property commonly known 752 East 7th Street, Chico, 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.

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43. [11-39194](#)-C-13 JASON WRIGHT  
MOH-2 Michael Hays

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
12-29-14 [[87](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on December 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Capital One Bank (USA) N.A. for the sum of \$24,395.50. The abstract of judgment was recorded with Butte County on March 4, 2011. That lien attached to the Debtor's residential real property commonly known as 752 East 7th Street, Chico, 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 \$237,500 as of the date of the petition. The unavoidable consensual liens total \$284,553 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Captial One Bank (USA) N.A., Butte County Superior Court Case No. 150601, Document No. 2011-0007483, recorded on March 4, 2011, with the Butte County Recorder, against the real property commonly known 752 East 7th Street, Chico, 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.

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2014. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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.**

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on December  
19, 2014 is confirmed, and counsel for the Debtors  
shall prepare an appropriate order confirming the  
Chapter 13 Plan, transmit the proposed order to the  
Chapter 13 Trustee for approval as to form, and if

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 23, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

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

1. Debtor has not complied with 11 U.S.C. § 1325(a)(2). Debtor received permission to pay the filing fee in installments and has made the first payment, due December 18, 2014. Debtor has three payments of \$77.00 remaining.
2. The plan will not complete in 60 months as required under 11 U.S.C. § 1322(d). Section 2.08 f the plan lists Class 1 mortgage arrears of \$5,500. Creditor Unified Mortgage Service, Inc., for James Shimp, filed a proof of claim indicating mortgage arrears of \$9,131.48. With this claim, the plan will take 100 months to pay the arrears in full.

A review of the docket shows that Debtor made a second filing fee installment payment on January 21, 2015, leaving two installment payments outstanding. Pursuant to 11 U.S.C. § 1325(a)(2), there remain two payments to be made as required under 28 U.S.C. § 123. Further, Debtor has not provided for the arrears of Unified Mortgage Service, Inc. and the plan term remains overextended.

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

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

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

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

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to grant the Motion to Dismiss.**

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$10,259.10 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5,504.08 was due on December 25, 2014.

#### **DEBTOR'S RESPONSE**

In response, Debtor states that she acknowledges the plan is delinquent and has filed a modified plan and motion to confirm the modified plan.

#### **DISCUSSION**

The docket shows that Debtor filed a Second Amended Plan on January 9, 2015 and then a Second Modified Chapter 13 plan on January 12, 2015. The plan filed on January 9, 2015 is not designated with a Docket Control Number and does not appear accompanied by a Motion to Confirm. The Plan filed on January 12, 2015 is listed with Docket Control number JRM-1, which has been previously used by the Debtor. It appears the appropriate Docket Control number should be JRM-4. Further, the Motion to Confirm was not accompanied by a separate notice of hearing and the hearing date in the caption is January 27, 2015, which is less than 35 days from the date of filing.

The court continued the hearing on this matter so it may be heard with Debtor's Motion to Confirm Second Modified Chapter 13 Plan. On January 14, 2015, Debtor withdrew the only Motion to Confirm that was properly set for hearing on January 27, 2015 (the plan was filed on December 23, 2014). The court set Debtor's Second Modified Plan for hearing on January 27, 2015. The court is prepared to deny that Motion on the basis that it does not comply with the Local Rules and does not demonstrate Debtor's ability to comply with the terms of the proposed plan.

What remains clear to the court is that Debtor's counsel has not complied with the local rules in providing adequate docket control numbers for Motions filed on the Docket and in filing notices of hearing. Debtor's counsel filed a Motion to Confirm Modified Plan and a Second Modified Plan on January 12, 2015. The court is denying the Motion to Confirm Second Amended Plan and Debtor remains delinquent in payments to the Trustee.

Cause exists to dismiss Debtor's case pursuant to 11 U.S.C. § 1307(c)(1) and (6).

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

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

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

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

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47. [14-30622](#)-B-13 PATRICK SALIMI  
PGM-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
12-17-14 [[30](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 17, 2014. Twenty-eight days' notice is required.

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

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| <b>The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.</b> |
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The Motion to Value filed by Patrick Salimi ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5159 Ridgeway Way, Fair Oaks, California ("Property"). Debtor seeks to value the Property at a fair market value of \$355,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result, of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set

off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The first deed of trust secures a claim with a balance of approximately \$368,394.34. Bank of America, N.A.'s second deed of trust secures a claim with a balance of approximately \$40,722.49. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 5159 Ridgeway Way, Fair Oaks, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$355,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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48. [11-26545](#)-B-13 MICHAEL BARNETT  
JPJ-2 John Tosney

OBJECTION TO CLAIM OF WELLS  
FARGO HOME MORTGAGE, CLAIM  
NUMBER 5  
12-9-14 [[89](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 9, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Claim of Wells Fargo Home Mortgage is sustained.**

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Wells Fargo Home Mortgage ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$247,720.14. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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).

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 Wells Fargo Home Mortgage, Creditor filed in this case by, Jan Johnson, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 5 of Wells Fargo Home Mortgage is sustained.

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49. [14-22445](#)-B-13 JORGE REYES AND ROSARIO OBJECTION TO CLAIM OF BANK OF  
JPJ-2 SANCHEZ AMERICA, N.A. CLAIM NUMBER 6  
Thomas Gillis 11-10-14 [[42](#)]

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 10, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Claim of Bank of America, N.A. is sustained.**

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$35,224.65. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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).

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 Bank of America, N.A., Creditor filed in this case by Jan Johnson, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 6 of Bank of America, N.A. is sustained.

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**Final Ruling:** No appearance at the January 27, 2015 hearing is required.  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 9, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Claim of Bank of America, N.A. is sustained.**

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$19,096.67. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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).

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 Bank of America, N.A., Creditor filed in this case by Jan Johnson, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 5 of Bank of America, N.A. is sustained.

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51. [14-21209](#)-C-13 LAURIE STEFANELLI  
JRM-1 Joseph Manning

MOTION TO MODIFY SECOND AMENDED  
PLAN  
1-12-15 [[93](#)]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Not 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 January 12, 2015. Based on the court's calculation, the motion was served on sixteen days' notice. Thirty-five days' notice is required. That requirement was not met.

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

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

#### **NOTICE ISSUE**

No notice of hearing was filed with Debtor's Motion to Confirm Second Modified Chapter 13 Plan. Further, a notice period of thirty-five (35) days is required for Motions to Modify and Debtor provided a mere sixteen (16) days of notice.

On this ground alone the court dismisses the motion without prejudice.

#### **CHAPTER 13 TRUSTEE**

Opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

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

1. Debtor's motion does not comply with LBR 9014-1(d)(2). The motion was not accompanied by a separate notice of hearing.
2. The docket control number does not comply with LBR 9014-1(d)(3). The docket control number, JRM-1 was previously used by the Debtor (Dkt. 40).
3. The motion does not comply with LBR 3015-1(d)(2) as the plan was filed less than thirty-five days before the hearing.
4. Trustee is uncertain of the proposed plan term. Debtor states in section 1.03 that the term is fifty (50) months. Debtor indicates in Section 6 - Additional Provisions, that payments will be over the course of 60 months.
5. Debtor has not made all payments required by 11 U.S.C. § 1325(1)(1). Debtor is \$10,958.84 delinquent in plan payments to the Trustee to date. The Debtor's petition was filed February 10, 2014, thus ten (10) payments have come due through December 31, 2014. Per section 6, Debtor should have made the following payments through December 31, 2014: \$3,101.86 twice, \$5,504.08 eight time, and \$6,500 once, for a total of \$56,736.36. Debtor has paid the Trustee \$45,777.62.
6. Trustee is uncertain of Debtor's ability to pay. 11 U.S.C. § 1325(a)(6). Debtor filed a declaration (Dkt. 80) stating that the plan is being modified because the contribution Debtor is receiving from her ex-spouse is being reduced from \$6,000 to \$3,200 per month. Debtor filed an Amended Schedule I with the declaration. Debtor filed a different declaration on January 12, 2015, testifying that the contribution from her ex-spouse is reducing from \$6,000 to \$3,931.33 per month. No explanation is provided for the change from the declaration filed one month earlier.
7. Debtor's filings are confusing and misleading. The court's docket reflects three Amended/Modified Plans filed by the Debtor since December 22, 2014 (Dkts. 75, 89, and 94). The debtor has filed two Motions to Confirm (Dkt. 77 and 93) with the hearing date of January 27, 2015. Each motion contains as exhibits copies of plans, Schedule I and Schedule J. Debtor also filed "Amended" Schedules I and J (Dkts. 73 and 93).

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

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

\*\*\*\*