

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

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

1.	13-31505 -C-13	KAO SAELEE	CONTINUED MOTION TO CONFIRM
	CK-1	Catherine King	PLAN
			1-7-14 [35]

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 January 7, 2013. Forty-two days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). The court previously continued the Motion to Confirm to permit adequate time for notice. 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

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

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 30, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [14-20505](#)-C-13 MATTHEW/LISA SCACCALOSI MOTION TO VALUE COLLATERAL OF
MET-1 Mary Ellen Terranella BANK OF AMERICA, N.A.
2-9-14 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 9, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 541 Dynasty Drive, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$482,600.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$668,195.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$120,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by 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 Bank of America secured by a second deed of trust recorded against the real property commonly known as 541 Dynasty Drive, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$482,600.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. [11-38510](#)-C-13 CHRISTOPHER ANDERSON AND MOTION TO MODIFY PLAN
BLG-4 AMBER DE FEVERE 1-9-14 [[56](#)]
Pauldeep Bains

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 January 9, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 9, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtor proposes a first modified plan calling for payments of \$2,985.37 per month for 60 months, with no less than 100% dividend to unsecured creditors. The original plan provided for payments of \$300.00 per month for 60 months with no less than 100% dividend to unsecured creditors.

The amended plan changes treatment of Creditor Wells Fargo Bank. Wells Fargo was originally listed in Class 4, as a direct pay creditor, and is not listed in Class 1 with arrears totaling \$37,212.24. The monthly dividend to the arrears is \$1,063.21 and the debtor lists the ongoing mortgage payment in the amount of \$1,505.50.

Trustee objects to confirmation because it appears Debtor cannot make the payments and comply with the plan and the plan does not comply with applicable law. 11 U.S.C. § 1325(a)(1) & (6).

2. Debtor is \$66,384.25 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,985.37 is due on February 25, 2014. Debtor has paid \$8,250.00 into the plan to date.

3. The plan payment required is \$2,985.37; however, Debtor's budget does not support the plan payment as Schedule J indicates monthly net income of \$1,044.99.
4. Debtors Motion to Confirm indicates that the holder of the First Deed of Trust (Wells Fargo Bank) has refused direct payments. To date, 13 mortgage payments have come due and it is not clear to the Trustee whether Debtor has in his possession a total of approximately \$19,571.50 of accumulated "refused" payments to Wells Fargo.
5. Debtor lists Wells Fargo Bank in Class 1 with monthly contract installments as \$1,505.50. Debtor's Motion to Confirm and Declaration both state that Wells Fargo should be paid equal monthly installments in the amount of \$1,550.01. Meanwhile, Wells Fargo filed a claim (#4) listing the ongoing mortgage payment as \$2,824.54. Based on this information, the plan payment of \$2985.37 is insufficient to fund the Class 1 ongoing mortgage payments, Class 1 monthly dividends, and the attorney fee distribution.

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.

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

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

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

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

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

1. Section 2.06 of the plan indicates that Debtor has paid counsel \$1,000.00 and that \$5,000.00 is to be paid through the plan. Debtor has not filed a Rights and Responsibilities of Chapter 13 Debtors and their Attorneys or Disclosure of Compensation of Attorney for Debtors.
2. Debtor did not file a Declaration in support of the Motion to Confirm setting forth evidence in support of confirmation and the components of 11 U.S.C. § 1325(a).
3. Debtors' Schedules contain the following inaccuracies:
 - a. Schedule E lists two debts to Shasta County Treasurer. Class 5 of the plan provides for these two debts as well as a debt to the IRS and a debt to the FTB. Schedule E does not list the debts to the IRS and FTB.
 - b. Schedule J lists on line 1 a mortgage expense of \$2,398.00. Class 1 of the amended plan provides for the mortgage and arrears payments on Debtor's residence. Class 3 of the plan provides for the surrender of the real property at 11754 Caughlin Road, Phelan, California. Class 4 of the plan provides for the payment to the rental property at 2925 Favretto Avenue, Redding California and lists that payment at \$1,000.00 per month. Therefore, line 1 of Schedule J should only list \$1,000.00 for the Favretto Avenue property.

Line 13a of Schedule J lists a motorcycle payments of \$138.00. This debt is provided for in Class 2 of the plan.

Line 13b lists a payment of \$290.50 to Rental-Caughlin, which, according to the amended plan, is being surrendered.

Adjusting the Schedule for these amounts causes the net income on line 20c to be \$4,355.00.

4. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6) because Debtor does not list any business expenses or self-employment tax expenses on Schedule J.
5. Debtor's plan does not provide for the secured claim of the Shasta County Tax Collector. The debt was scheduled as priority for \$8,103.00 and the creditor filed a secured claim for \$33,625.30 at 18% interest. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), not providing for 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.
6. Debtors plan will not complete in 60 months, 11 U.S.C. § 1322(d). Section 2.15 of the plan proposes to pay 100% of unsecured debts listed at \$3,648.00. Creditor USS Cal Builders, Inc. filed an unsecured claim on January 3, 2014 (Claim #7) for \$50,000.00. The plan will take 226 months to pay all claims in full, including the Shasta County claims.
7. Debtor's plan does not pass the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors non-exempt assets total \$179,041.00 and Debtor proposes to pay 100% to unsecured creditors; however, the plan will not pay all creditors 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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 29, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

(1.) Debtor did not appear to be examined at the First Meeting of Creditors held on January 23, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343. The meeting was continued to March 20, 2014 at 10:30 a.m.

(2.) It appears that the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$394.00. To date, the Trustee has not received any plan payments from the Debtor, where one payment has come due. The next scheduled payment of \$394.00 is due February 25, 2014.

(3.) Debtor did not provide the Trustee with a tax transcript or a copy of his/her Federal Income Tax Return with attachment for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A(1)).

(4.) The Debtor cannot make payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

(a.) Schedule J lists debtor's net income as -\$170.00.

(b.) Section 2.08 of the plan lists the arrearage of dividend to Green Tree as \$13,176.00.

(c.) Section 2.08 of the plan calls for interest rate on arrears of 7% to Green Tree. The Debtor's Plan may not comply with applicable provisions of 11 U.S.C. § 1325(a)(1): These creditors may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

(d.) The treatment of Green Tree's security interest is unclear. Schedule D lists Green Tree as an "equity loan" in the amount of \$37,728.00. Class 3 lists "Green Tree-Home" and section 2.09 lists creditor's name as "None" yet scheduled "none" in the amount of \$37,728.00.

(e.) Debtor has not provided a dividend to the unsecured creditors in Section 2.15.

(f.) The Statement of Financial Affairs does not list any income for 2013.

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

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

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

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

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

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 January 23, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$29,000. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Nissan Armada. The Debtor seeks to value the property at a replacement value of \$29,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in August 14, 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$38,922.56. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$29,000. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nissan Motor Acceptance Corp. secured by a 2010 Nissan Armada, is determined to be a secured claim in the amount of \$29,000.00, 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 \$29,000.00 and is encumbered by liens securing claims which exceed the value of the Property.

8. [13-34827](#)-C-13 JONAS JOHNSON AND IRENE OBJECTION TO CONFIRMATION OF
TSB-1 STAMBAUGH-JOHNSON PLAN BY DAVID CUSICK
Christian J. Younger 1-23-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on January 23, 2014. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtors did not provide Trustee with a tax transcript or a copy of their Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

(2.) It appears that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are under the median income and proposes plan payments of \$1,455.00 for 1 month, then \$1,790.00 for 59 months with a 0% dividend to unsecured creditors.

The Debtor lists her co-debtor's personal injury claim for jaw, shoulder, and neck injuries sustained in a car accident in 2009 on Schedule B. The Debtor states that the recovery is unknown. Co-Debtor has hired Stawicki and Maples to handle her claim. The Debtor lists the value of this asset as "unknown" on Schedule B; however, the Debtor exempts \$46,313.00 for this asset on the Schedule C. The Debtor did not propose any non-exempt funds into the Plan.

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

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

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

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

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

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 January 23, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$9,946.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Dodge Ram 1500. The Debtor seeks to value the property at a replacement value of \$9,946.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$16,770.34. Therefore, the respondent creditor's claim secured by alien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,946.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA secured by a 2006 Dodge Ram 1500, is determined to be a secured claim in the amount of \$9,946.00, 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 \$9,946.00 and is encumbered by liens securing claims which exceed the value of the Property.

10. [13-35531](#)-C-13 EDWIN/ELIZABETH RIVAS
PGM-3 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
1-23-14 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 23, 2014. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Dodge Ram 1500. The Debtor seeks to value the property at a replacement value of \$17,839.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in February 10, 2011, more than 910 days prior to the filing of the petition, with a balance of approximately \$30,634.44. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

Creditor's Opposition

GM Financial ("GMF") opposes Debtors' Motion to Value Collateral of GMF based upon Debtor's lack of evidence to support their contention that the replacement value of the 2010 Dodge Ram 1500 ("Vehicle") is \$17,839.00. GMF states that Debtors list six items of needed repair work to the Vehicle, and that they do not provide any evidence (i.e., repair estimates from autobody shops, etc.) as to why they believe it would cost between \$3,790.00 and \$5,200.00 to make repairs. Docket #34, Debtor's Motion to Value Collateral. As such, GMF contends that Debtors' estimation of value of the Vehicle lacks credible evidentiary support and should be denied.

To determine the valuation of collateral, GMF cites to 11 U.S.C. § 506(a), which provides:

If the debtor is an individual in a case under

chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing of the petition without deduction of costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

GMF refers to the Retail Installment Sale Contract between GMF and Debtors, wherein Debtors indicate that the vehicle was acquired for "personal use" in the section entitled "Primary Use for Which Purchased." Docket #40, Exhibit B. GMF emphasizes the language "the price a retail merchant would charge" from 11 U.S.C. § 506(a), and asserts that the price a retail merchant would charge is most accurately measured by the "retail" value of the Vehicle. In determining claim valuation, GMF cites to *In re Thayer*, 98 B.R. 748 (BK W.D.V.A 1989) to assert that courts find industry guides as appropriate evidence of value.

GMF cites to F.R.E 803(17), which provides that a "market report" or "commercial publication" is admissible as an exception to hearsay. F.R.E 803(17) specifies that, "Market quotations, tabulations, lists, directories, or other published compilation, generally used and relied upon by the public or by persons in particular occupations," qualify as "market reports" or "commercial publications." GMF states that *NADA Guides* qualifies as a "market report" or "commercial publication" based on its semi-annual, nation-wide publication of "market reports" and/or "commercial publications" wherein quotations for vehicles of a particular make, model, and year are published for public and commercial purposes. Additionally, GMF asserts that the *NADA Guides* are regularly relied upon by GMF in ascertaining values for vehicles in the normal use of its business. Docket #40, Declaration of Aaron Rangel.

GMF asserts that the replacement value of the Vehicle is \$27,650.00 based upon the Vehicle's estimated "retail value" in the *NADA Guides* report. Docket 41, Exhibit C. However, GMF seeks payment of \$27,334.23, which is the balance owed by Debtors pursuant to the Contract, and requests that GMF's secured claim be found no less than \$27,334.23.

Debtor's Response

Debtor provides the following review of the evidentiary record:

(1.) Creditor presented the court with an unauthenticated NADA Official Used Car Guide asserting a \$27,650 "clean retail" value, and offers no personal knowledge as to the subject vehicle meeting the "clean retail" value.

(2.) Debtor presented the court with a commercial publication value and deducted amounts based on personal knowledge of damage to the vehicle. Creditor has not made a personal inspection, has not asked to inspect the vehicle, nor included any expert opinion of the valuation of the vehicle.

(3.) Creditor's declarant, Aaron Rangel, as the "Vice President of Special Accounts for Respondent Americredit Financial Services, Inc." would have little personal knowledge of GM Financial as nothing indicates personal knowledge of that entity's books and records, the Retail Installment Contract Debtor entered into with GM Financial, etc.

(4.) The evidence before the court is Debtor's assertion of value at \$17,839.00. Creditor has not submitted admissible evidence sufficient to dispute Debtor's briefings.

Discussion

The court is faced with an evidentiary dispute over the proper value of the subject vehicle. Debtors assert an opinion of value at \$17,839.00. Creditor asserts a value of \$27,650 based on the "clean retail" figure drawn from the N.A.D.A. Guide. Creditor appears to have met authentication requirements of Fed. R. Evid. 901, because Creditor provides the Declaration of Aaron Rangel that authenticates the N.A.D.A. guide printout attached as Exhibit C (Dkt. 41).

Here, the Debtor is an individual in a Chapter 13 case who proposes to retain the Vehicle for personal use. Thus, any valuation of Debtor's vehicle must be determined based on the replacement value of the property under 11 U.S.C. § 506(2). The text of 11 U.S.C. § 506(2) indicates that replacement value should factor in the age and the condition of the property, at the time of the value is assessed.

Of persuasive consideration here is the case of *In re Morales*, 387 B.R. 36 (Bankr. C.D. Cal. 2008), which describes the approach of virtually all courts with published decisions on the topic, concluding that,

After reviewing the statute, the available caselaw, and the arguments of the parties, this Court concludes that the correct method for calculating the retail value of a vehicle under § 506(a)(2) ultimately depends on the facts presented in each case. *Cf. Taffi v. United States* (In re Taffi), 96 F.3d 1190, 1193 (9th Cir.1996), cert. denied, 521 U.S. 1103, 117 S.Ct. 2478, 138 L.Ed.2d 987 (1997). As a general principle, however, this Court further concludes that, absent unusual circumstances,³ the retail value should be calculated by adjusting the Kelley Blue Book or N.A.D.A. Guide retail value for a like vehicle by a reasonable amount in light of any additional evidence presented regarding the condition of the vehicle and any other relevant factors. See *In re Coleman*, 373 B.R. 907, 912-13 (Bankr.W.D.Mo.2007); *In re Carlson*, No. 06-40402, 2006 WL 4811331, at *2 (Bankr.W.D.Wash., Dec.8, 2006); *In re Eddins*, 355 B.R. 849, 852 (Bankr.W.D.Okla.2006). Value should be calculated as of the petition date, not the valuation hearing. The burden in proving the reasonableness of any deviation from the guide retail value rests with the debtor because the debtor has the best access to information about the condition of the vehicle. See *In re Coleman*, 373 B.R. at 913; *In re Eddins*, 355 B.R. at 852. *In re Morales*, 387 B.R. 36, 45 (Bankr. C.D. Cal. 2008)

Id. at 45.

The court's holding in *In re Morales* suggests that the general approach of most bankruptcy courts interpreting § 506(a)(2) and with the bankruptcy courts of the Ninth Circuit, is that the approach of reviewing valuations of personal property on a case-by-case basis is more favored under 11 U.S.C. § 506(a)(2) than conflating the replacement value of a car with the retail value suggested by the N.A.D.A.

Here, the only evidence that Creditor has provided in support of its valuation of the vehicle in the amount of \$27,650.00 is copy of the N.A.D.A. Official Used Car Guide (Exh. C, Dkt. 41). The breakdown factors the base value of the vehicle, a 5.7L HEMI v8 Engine, Alpine Stereo System, Navigation System, Power Sunroof, and Towing/Camper package. As the valuation is generated by N.A.D.A. and does not account for Debtor's input (and an independent inspection of the vehicle has not been conducted by Creditor), the suggested price does not account for the current condition of the vehicle, and repairs that may need to be executed in order to be resold.

The court also questions Debtors' valuation of the property. Debtors state that they started with a commercial publication value for the vehicle and deducted for the following issues: tunnel cover is missing bolts, rear end out, scratches on body, dent on door, deep scratches on rear bumper, needs tune. Debtors states in their Declaration that they concluded it would cost between \$3,790 and \$5,200 to make the needed repairs. The court is not satisfied with Debtors' opinion of value because Debtors do not provide the court with the commercial publication baseline value they started at before considering needed repairs. Further, Debtors' description of issues with the vehicle are too vague to reasonably glean an estimation for the cost of repair.

Thus, the court finds it more appropriate to set this matter for an evidentiary hearing pursuant to Local Bankruptcy Rule 9014-1(g), where the court can resolve disputed material factual issues over the valuation of the vehicle. Creditor and Debtor will be able to supply the court with competent evidence of their valuations of the subject vehicle.

The court shall issue a minute order 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 to
Value is set for an evidentiary hearing on
[date] at [time].

11. [13-35531](#)-C-13 EDWIN/ELIZABETH RIVAS
TSB-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
1-23-14 [[25](#)]

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

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

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

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

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

(1.) The Debtor did not file a motion to value collateral. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claims of Santander Consumer USA and Americredit Financial Services in Class 2, but has not filed motions to value collateral.

Discussion

Since Trustee filed this Objection, Debtors have filed Motions to Value the secured claims of Santander Consumer USA and Americredit Financial Services. While the court intends on granting the Motion to Value the secured claim of Santander Consumer USA, the court is setting an evidentiary hearing for the Motion to Value the secured claim of Americredit Financial Services; therefore, the Trustee's Objection remains valid and is sustained. The Plan is not confirmed.

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

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

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

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

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

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 January 3, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

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 January 3, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 29, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

(1.) Debtor did not appear and be examined at the First Meeting of Creditors held on January 23, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343. The Debtor should be aware of this requirement since this is the fourth case filed by the Debtor since December 16, 2009. The meeting was continued to March 20, 2014 at 10:30 a.m.

(2.) It appears that the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$2,713.00. To date, the Trustee has not received any plan payments from the Debtor, where one payment has come due. The next scheduled payment of \$2,713.00 is due February 25, 2014.

(3.) Debtor did not provide the Trustee with her Employer Payment Advices received 60 days prior to filing, under 11 U.S.C. § 521(a)(1)(B)(iv).

(4.) Debtor did not provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

(5.) The Debtor cannot make payments under the plan or comply with the plan, 11 U.S.C. § 1325(a) (6).

(a.) Schedule J lists debtor's net income as \$12.00. The plan calls for payments of \$2,713.00 per month for 60 months.

(b.) Section 2.08 of the plan lists the arrearage of dividend to Ocwen and Bank of America

(c.) Section 2.08 of the plan calls for interest rate on arrears of 3.62% to Ocwen and 5% to Bank of America. The Debtor's Plan may not comply with applicable provisions of the Bankruptcy Code, 11 U.S.C. § 1325(a) (1): These creditors may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

(d.) Section 2.15 of the plan is blank. No dividend to the unsecured creditors was disclosed.

(e.) Schedule B fails to provide a complete description of all the debtor's personal property.

(f.) Schedule C is blank.

(g.) The Statement of Financial Affairs is incomplete. Question #1 does not list income received by the debtor during the two years immediately preceding commencement of this case.

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

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

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

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

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

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on January 17, 2014. 28 days' notice is required; that requirement was met.

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

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with U.S. Bank, N.A. concerning real property commonly known as 4138 Palm Avenue, Sacramento, California. The modified principal balance for the not will be \$139,078.10. The new loan payments will be in the amount of \$896.31 at an interest rate of two (2) percent for years one (1) through five (5), three (3) percent for year six, four (4) percent for year seven, and four and a half (4.5) percent for years eight (8) through twenty-three (23) of the loan term. A copy of the loan modification agreement with U.S. Bank, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Dkt. 31).

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

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

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

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

IT IS ORDERED that Debtors are authorized to

amend the terms of their loan with U.S. Bank, N.A., which is secured by the real property commonly known as 4138 Palm Avenue, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," in Docket Entry No. 31, in support of the Motion.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and Office of the United States Trustee on February 6, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Debtors move to dismiss their Chapter 13 case pursuant to 11 U.S.C. § 1307(b). Debtors argue that the case has not been converted previously and they are entitled to the dismissal.

Pursuant to 11 U.S.C. § 1307(b), on the request of a debtor, if the case has not been converted under section 706, 1112, or 1208 of Title 11, the court shall dismiss the case. Here, the case has not been previously converted under any section of Title 11. Cause exists to dismiss the case. The motion is granted and the case is dismissed. The court shall issue a minute order substantially in the following form holding that:

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation for the following reasons:

1. Trustee's Objection to Confirmation was sustained by the court on December 17, 2013 (Dkt. 20). Trustee, in part, raised the following issue in his objection:

It appears that Debtor cannot make the payments under 11 U.S.C. § 1325(a)(6). According to Debtor's schedule I, she is unemployed and her plan relies heavily on the following sources of income:

- (A.) \$658.66 unemployment
- (B.) \$600.00 brother rent
- (C.) \$1,800.00 family rent
- (D.) \$2,800.00 sister

Debtor's statement of financial affairs does not reflect any rental income or assistance from her sister in Question #2, only unemployment income for 2012 and 2013 is listed.

No income verification from Debtor was received showing that Debtor has received rental and financial assistance from her sister. No declarations were filed by the debtor, brother, family, or sister stating their ability and willingness to either assist or verify rent being paid to Debtor.

After Trustee made this Objection, on January 7, 2014 (Dkt.

28) the Declaration of Carmen Williams (Debtor's sister) was filed, stating her ability and willingness to contribute up to \$2,800.00, as needed. No other declarations have been filed verifying the income.

2. Debtor's Schedule J does not match her plan and the plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's monthly net income on Schedule J totals \$4,615.66. Debtor's proposed monthly plan payments pursuant to the First Amended Plan filed January 7, 2014 (Dkt. 23) are \$4,613.00 for one month and then, beginning December 2013, the payment increases to \$4,195.00 for 59 months.

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.

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 January 10, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 10, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 11, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor having filed an opposition, the court will address the merits of the motion at the hearing.

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

Summary

Debtors Raymond Eugene Stowie and Krista Diane Stowie ("Debtors") object to the Notice of Mortgage Payment Change of JP Morgan Chase Bank, N.A. ("Creditor"). The Notice, which was filed as a supplement to Creditor's Proof of Claim filed on March 2012 as Claim No. 4, reflects that the new payments to be made by Debtors as \$1,637.40. Debtors state that they agreed to a new payment of \$1,405.96. Debtors object to the excess of the agreed amount, which is \$231.44 of the new payment stated in the Notice.

As Debtors state, FRBP 3002.1(e) provides for a motion procedure to resolve disputes of a notice under subsection (c) of Rule 3002.1. The Rule does not state a procedure for dispute of a notice under subsection (b) of the Rule. Subsection (d), however, treats a notice under subsection (b) as a supplement to the proof of claim filed by the creditor, and therefore dispute of the Notice is brought by this Objection.

Prior Hearing

The court heard Debtor's objection on December 10, 2013. At that hearing, Creditor requested that the matter be continued for 60 days to permit time to review the record. The court was amenable to Creditor's request and granted the continuance with the understanding that if the issue was not resolved, the matter would be set for an evidentiary hearing.

No supplemental pleadings were docketed by either party; therefore, the court's tentative decision to set the matter for an evidentiary hearing remains unchanged.

Background

The Debtors' case was filed on October 21, 2011. The period involved in the mortgage payment change, as stated by the Creditor, is February 2012 to October 2014. Exhibit A, pgs. 5-7. The Debtors believe the appropriate period is November 2011 through October 2014 because the case was filed at the end of October 2011, and the Creditor treats the payment change period to extend to October 2014 in determining the components of the payment change, as shown on pages 5 and 7 of Exhibit A, which consist of statements showing activity in Debtors' escrow account.

The components of the payment change according to the Notice are the principal, interest and escrow of Debtors' loan; the escrow amount includes county tax and homeowners insurance. Exhibit A, pgs. 6 and 7. Debtors dispute the tax and insurance amounts stated by the Notice at Exhibit A, on pages 6 and 7. Debtors assert that correct tax and insurance for the period taken into account, as noted above, for the mortgage payment change, are as follows (exhibit references are listed below):

County Tax

Year	Due Date	Amount	Exhibit
2011/2012	12/12/2011 4/10/2012	741.74 741.74	C page 14 C page 14
2012/2013	12/10/2012 4/10/2013	742.79 742.79	D page 15
2013/2014	12/10/2013 4/10/2014	742.79 742.79	2013/2014 tax statement has not yet been received. The 2012/2013 amounts of tax are used for estimates of the 2013/2014 amounts
	Total		

Homeowner's Insurance

Year	Due Date	Amount	Exhibit
6/2011 - 6/2012	June 2011	0	The insurance premium is based on a June to June cycle (Exhibit E page 16), and is paid by the Creditor in May (Exhibit A pages 6 and 7), and so for 2011, was prepetition.
6/2012 - 6/2013	June 2012	\$1,532.00	F page 17

6/2013 - 6/2014	June 2013	\$1,559.00	G page 18
6/2014 - 6/2015	June 2014	\$ 1,559.00	The 2014/2015 insurance statement has not yet been received. The premium amount for the 2013/2014 year is used as an estimate for the 2014/2015 year.
	Total	\$4,650.00	

Total Tax and Insurance for period November 2011 to October 2014:

Tax (per above):	\$4,454.64
Insurance (per above):	\$4,650.00
Total:	\$9,104.64

According to the Notice, the current mortgage payment is as follows (Exhibit A, page 5):

Principal and interest:	\$1,030.64
Escrow:	\$191.70
Total:	\$1,222.34

Debtors state that at the current monthly escrow amount of \$191.70, for the period from November 2011 to October 2014 (a period of 36 months), the escrow funds paid will be \$6,901.20. The difference between the needed escrow amounts, as calculated above, for the period involved, and the escrow deposits which will be paid at the current monthly escrow amount for the period involved, as calculated above, is:

Needed escrow deposits:	\$9,104.64
Current deposits:	\$6,901.20

This difference must be paid over twelve months, as noticed by the Creditor. The deficit in monthly escrow deposits is $\$2,203.44 \div 12 = \183.62 . Thus, the mortgage payment must be increased by \$183.62 per month. Pursuant to the Notice the current mortgage payment is \$1,222.23; the new payment is consequently :

Current payment:	\$1,222.23
Prorated deficit:	\$183.62
Total:	\$1,405.96

Debtors assert that the new payment should be \$1,405.96 commencing November 1, 2013, and commencing with the November 25, 2013 plan payment. As a result, Debtors object to the new payment amount stated by the Creditor in the Notice at \$1,637.40, and specifically object to the difference in amount between the Creditor's new payment amount, and the payment amount stated by the Debtors, such difference being \$231.44, calculated as follows:

Creditor new payment:	\$1,637.40
Debtors' new payment amount:	\$1,405.96
Difference:	\$231.44

Debtors additionally object to the negative balance of \$2,050.17 listed on the escrow account, on the basis that there is no accounting or evidence in support of this amount. Debtors also object to the notice on the basis that it includes payment of prepetition taxes. The confirmed plan (Dckt. No. 27) provides for an arrearage of \$13,363. The claim of the Butte County Tax Collector, Claim No. 5 (Exhibit B, page 10), states an arrearage of \$10,496.95. The difference is \$2,866.35, which includes the prepetition tax claim reviewed above; the confirmed plan already deals with the prepetition county tax issue, which Debtors state Chase does not take into account.

Creditor's Opposition

On March 1, 2012, Chase filed a proof of claim in the sum of \$197,543.52. On September 23, 2013, Chase filed its Notice of Payment Change. The Notice appraises Debtors of the new escrow payment of \$606.76, commencing with the November 1, 2013 monthly mortgage installment.

Chase attached with the Notice an Escrow Account Statement dated August 23, 2013 ("Escrow Statement") reflecting that effective with the November 1, 2013 monthly payment, the new escrow payment will be \$606.76, consisting of \$253.72 for the escrow account deposit and \$353.04 as and for escrow shortages. The Escrow Statement also reflects a review period of February, 2012 to October, 2013.

Debtors acknowledge that there is an escrow amount owing; however, Debtors object to any amount in excess of \$375.32. It would appear that Debtors are objecting to both components of the monthly escrow payment - the ongoing escrow deposit (\$253.72) and the escrow shortage amount (\$606.76). In response to Debtors' objection to the ongoing escrow deposit in the amount of \$253.72, the Escrow Statement reflects at Page 2 that the projected escrow account activity for the upcoming 12 month period from November, 2013 to October, 2014 includes the following anticipated disbursements:

<u>Date</u>	<u>Activity</u>	<u>Estimated Amount</u>
November, 2013	Payment of Property Taxes	\$742.79
March, 2014	Payment of Property Taxes	\$742.79
June, 2014	Payment of Hazard Insurance	\$1,559.00

The escrow deposit payment of \$253.72 consists of the total projected disbursements of \$3,044.58 spread out over 12 months. Chase contends that the ongoing escrow deposit of \$253.72 is correct and should not be reduced. In response to Debtor's objection to the escrow shortage figure of \$353.04, Chase is currently reviewing its file to provide a detailed itemization requested by Debtors pertaining to the 21 month period of time set forth in the Escrow Statement and will amend the instant opposition to provide such itemization upon receipt.

Debtors' Response

Debtors state that Creditor and Debtors are in agreement regarding the components of the ongoing escrow deposit, and that only tax and insurance--and not the principal and interest of the mortgage payment--are in dispute. Debtors additionally argue against allowing Chase to amend their opposition after reviewing its file to provide an itemization of the account. Debtors believe that the 43 days that Creditor had to review its

file was sufficient, and that the 21-months review would not be helpful because the escrow issue requires review from the filing of the case, through the projected period stated in the Creditor's Notice, instead of the February 2012 through October 2013 timeline described by Creditor in its opposition.

Ruling

The court's decision is to set this matter for an evidentiary hearing as prescribed by procedures under Local Bankr. R. 9014-1(g). It is clear that disputed material factual issues remain to be resolved, and that Creditor will need more time to review its files for the escrow items according to the timeline that Debtors have stated.

Although Debtors assert that the 21 month itemization of escrow items by Creditor on Debtors' proposed timeline will not be helpful, Creditor may choose to instead offer an itemization of the tax and insurance items from the filing of the case in October 2011 (the period that Debtors describe) through the projected escrow needs of Creditor in October 2014. Creditor may offer conflicting analysis of the escrow items as charged on Debtors' timeline, at which point the court will need to parse the competing data provided on Debtors' escrow account. Thus, the court finds an evidentiary hearing to be most appropriate in this matter.

The court shall issue a minute order 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 an evidentiary hearing on the Objection to Notice of Mortgage Payment Change is set for [date] at [time].

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 January 10, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 10, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2013. Forty-two days' notice is required. That requirement was met.

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

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

Creditor, Deutsche Bank National Trust Company, and the Chapter 13 Trustee filed oppositions to Debtor's Motion to Confirm.

Creditor's Opposition, filed 02/06/2014 (Dkt. 62)

Creditor opposes Debtor's Motion to Confirm based on the following:

1. Debtor's plan provides for payments to the Trustee in the sum of \$749.00 per month for 60 months for the monthly contractual period. However, Debtor's plan makes no provision for the cure of Creditor's pre-petition arrears. 11 U.S.C. § 1322(d).
2. The ongoing monthly payment to Creditor totals \$969.81 and the estimated prepetition arrearage on Creditor's secured claim is approximately \$64,678.52. Debtor will have to increase the plan payment to approximately \$1,077.98 per month in order to cure Creditor's prepetition arrears over a period not to exceed 60 months. 11 U.S.C. §§ 1325(a)(6) & 1322(d).

Chapter 13 Trustee's Opposition, filed 02/11/2014 (Dkt. 65)

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

1. Debtor is \$941.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$941.00 is due on

February 25, 2014. Debtor has paid \$0.00 into the plan to date.

2. Section 6 of Debtor's plan contains the following additional provisions, which may not comply with applicable law:

- a. Section 6(a)(1): "I proposed to add the November 2013 payment of \$1,023.00 and the December 2013 payment of \$1,023.00 back into the overall amount owed on my plan for a total plan repayment of \$11,126.00."

Trustee notes that Debtor's original plan called for payments of \$1,023.00 for 60 months. Trustee is not certain why Debtor proposes to pay in a total of \$11,126.00 over the term of the plan. Section 6(1)(c) indicates Debtor is proposing payments of \$941.00 for fifty-eight (58) months, which amounts to a total of \$54,578.00 over the life of the plan. It appears Debtor is attempting to be forgiven for the payments due November and December 2013 and begin payments of \$941.00 in January 2014.

- b. Section 6(1)(e) indicates that Americas Servicing Company has not filed a claim for mortgage arrears and Debtor proposes to pay only the ongoing mortgage payment of \$749.00. Trustee notes that the bar date for filing claims has not expired, it is set for March 5, 2014. Creditor Deutsche Bank National Trust has filed an Opposition to the Motion to Confirm indicating mortgage arrears of \$64,678.52 and a regular ongoing mortgage payment of \$969.81.
- c. Section 6(4) of the plan states that a Mortgage Loan Modification is in progress. A review of the docket shows that Debtor has not filed a Motion to Approve Loan Modification. The plan does not contain the property language to provide for such a loan modification or any alternative provision in the event a modification is denied, such as payment of the mortgage arrears or surrender of property.

3. Debtors plan provides for the ongoing mortgage payment in Class 1 at \$749.00; however debtor has yet to make payment and the mortgage is delinquent at least three post-petition payments of \$749.00 each.
4. Debtor has filed a total of nine cases over the years: 03-23975, 08-39044, 10-25066, 11-25228, 11-43836, 12-29177, 13-21452, 13-24737, and the instant case.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The court urges Debtor to consider obtaining counsel to assist with the preparation of a Chapter 13 plan that resolves the objections outlined by Creditor and the Chapter 13 Trustee.

The court shall issue a minute order 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2013. 35 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtor's Modified Plan because Trustee is uncertain whether Debtor can make the payments required under the plan. 11 U.S.C. § 1325(a)(6). Debtor has not filed current statements of income and expense. The Debtor did file copies of the statements the Debtor filed with its original petition. Debtor has moved since filing of the petition, change of address appears at Dkt. 34, but the current rent expense is unknown.

No Substitution of Counsel

The Chapter 13 case was filed in November 2011. In a loss to the Sacramento legal community Debtor's attorney recently passed away. No other attorney has substituted in as counsel for the Debtors in this case. Debtor is finishing the first year of his five year plan.

Due to the unfortunate and unusual circumstances under which this motion is presented to the court, it is the court's decision to continue this hearing to [date] at [time], to permit Debtor the opportunity to file the updated information requested by Trustee.

The court shall issue a minute order 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 hearing on the Motion to Confirm the Plan is continued to **[date]** at **[time]**.

22. [13-36153](#)-C-13 RICHARD/STACIA RUSAKOWICZ MOTION TO VALUE COLLATERAL OF
SG-1 Shareen Golbahar INTERNAL REVENUE SERVICE
Thru #23 1-15-14 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$41,445.88. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 814 Villanova Drive, Davis, California. The Debtor seeks to value the property at a fair market value of \$575,000 as of the petition filing date. Debtor is also the owner of various items of personal property listed in Schedule B. Debtor seeks to value the personal property in Schedule B at \$41,445.88, after consideration of consensual secured interests. 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 \$571,854.74. The second deed of trust secures a loan with a balance of approximately \$11,506.08. The Internal Revenue Service's tax lien totals \$77,500.00. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized, with regard to the real property. There being no senior interests in Debtors' personal property, the IRS's secured claim is determined to be the amount of \$41,445.88. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Internal Revenue Service secured by a tax lien recorded against the real property commonly known as 814 Villanova Drive, Davis, California and personal property, as described in Schedule B, is determined to be a secured claim in the amount of \$41,445.88, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

23. [13-36153](#)-C-13 RICHARD/STACIA RUSAKOWICZ MOTION TO VALUE COLLATERAL OF
SG-2 Shareen Golbahar EMPLOYMENT DEVELOPMENT
DEPARTMENT OF STATE OF
CALIFORNIA
1-15-14 [[19](#)]

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 July 5, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 814 Villanova Drive, Davis, California. The Debtor seeks to value the property at a fair market value of \$575,000 as of the petition filing date. Debtor is also the owner of various items of personal property listed in Schedule B. Debtor seeks to value the personal property in Schedule B at \$41,445.88, after consideration of consensual secured interests. 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 \$571,854.74. The second deed of trust secures a loan with a balance of approximately \$11,506.08. The Internal Revenue Service holds a tax lien totaling \$77,500.00. The Employment Development Department of the State of California's tax lien totals \$6,521.77. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized, with regard to the real and personal property. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Employment Development Department of the State of California secured by a tax lien recorded against the real property commonly known as 814 Villanova Drive, Davis, California and personal property, as described in Schedule B, 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.

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

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

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

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

The Chapter 13 Trustee opposes confirmation of the Plan because it relies on a Motion to Value the secured claim of Flagstar Bank, which was continued from January 28, 2014 to March 4, 2014. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The court's decision is to sustain the objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed. The court shall issue a minute order substantially in the following form holding that:

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

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

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

25. [13-35659](#)-C-13 GLENN CARNAHAN
LBG-1 Stephen J. Johnson
Thru #26

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
1-16-14 [[16](#)]

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

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

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

The court's tentative decision is to deny the Motion to Value Collateral without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of "Bank of America." It is unclear which "Bank of America" entity Debtor refers to in its motion; there are several different entities with the words "Bank of America" in their names listed with the California Secretary of State and several listed as federally insured financial institutions. Though service of process appears proper for some of the Bank of America entities, the court declines to guess from which one the Debtor seeks relief.

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 to
Value is denied without prejudice.

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

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

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the Objection to March 25, 2014 at 2:00 pm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan relies on a pending Motion to Value Collateral of Bank of America, which is set for hearing on February 25, 2014. If the motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full. 11 U.S.C. § 1325(a)(6).
2. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor has listed a double deduction of \$1,325.39 on Schedule J for Bank of America's Class 4 mortgage payments; therefore, Debtor cannot increase the plan payment by \$1,325.29 per month.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. A software error from recently updated forms caused duplications in certain expenses and some income items were incorrectly disclosed.
2. Debtor requests that Trustee's Objection to Confirmation be continued to March 25, 2014 for Debtor's hearing on the Motion to Confirm.

The court's decision is to continue the hearing on the Objection to Confirmation to March 25, 2014. The court is prepared to deny Debtor's

Motion to Value the secured claim of Bank of America because Debtor was not specific enough as to the name of the entity whose secured claim he seeks to modify. This continuance should provide Debtor with sufficient time to correct the software errors and prepare an adequate Motion to Value the secured claim of Bank of America.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to March 25, 2014 at 2:00 pm.

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

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

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation of the Plan because it is not Debtor's best effort. 11 U.S.C. § 1325(b) and may not have been filed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's original Form B22C reflects that Debtor is under the median income and proposes plan payments of \$2,360.00 for 36 months with a 0% dividend to unsecured creditors; however, based on Trustee's review of Debtor's original Schedule I (Dkt. 1), Debtor appears to be over the median income and the plan should be proposed at 60 months.

Debtor's income on Schedule I and the pay advices provided to Trustee reflect gross monthly income of \$5,852.00. Debtor recently amended Schedule I and Form B22C on January 21, 2014 and changed the gross income from \$5,852.00 to \$5,467.05, without any explanation or documentation. At the First Meeting of Creditors, held January 16, 2014, Trustee requested the last six (6) months of pay advices to prove that Debtor was under the median income. The Case was filed on December 13, 2013, and Debtor has provided six (6) months of pay advices to Trustee, which reflect total six (6) month gross income of \$34,043.66, or \$68,087.31 for twelve (12) months. The median income for a family of three (3) is \$66,618.00; therefore, Debtor is over the median income and must complete Form B22C and propose a six (6) month plan.

Trustee is concerned with how Debtor calculated the monthly gross income listed on the original Form B22C and how Debtor calculated gross monthly income listed on amended Schedule I, when pay advices reflect more income.

Debtor's Response

In response to Trustee's Objection, Debtor asserts that his original plan constant technical errors, as raised by the Trustee, which have been resolved, as follows:

1. The Form B22C was amended and filed (Dkt. 30), reflecting the correct 60 month plan period, as per Trustee's calculations. Debtor's annualized current monthly income on line 15 of Amended Form B22C is \$68,087.28. Debtor's annual income is over the median income for the household size of three and, as such, a sixty (60) month plan is proposed.
2. Debtor's original plan provided for a thirty-six (36) month plan period because the original form B22C gross income was calculated based on pay advices "issue dates" versus "pay periods" dates. Debtor is a State employee and occasionally receives two (2) paychecks within the same month. The funds are direct deposited into Debtor's bank account on the "issue date" and, as such, were calculated as qualified income towards the B22C. The Form B22C income was calculated between the issue dates of June 1, 2013 through November 30, 2013 showing total gross income for six (6) months of \$28,202, or \$56,405 for twelve (12) months. This resulted in a 36 month proposed plan.
3. Debtor filed an amended Form B22C with the gross income in the amount of \$5,467.05, based on Debtor's year-to-date gross average income; however, since this time, the Form B22C and Schedule I were amended to reflect the correct calculations per Trustee's Objection. Debtor's second Amended Schedule I is filed to reflect the gross income in the amount of \$5,852.00, as per current pay advices (Dkt. 31).
4. Debtors's amended plan proposes a minor correction to Class 1 & Class 2 creditors. The on-going mortgage payment to Class 1 creditors, Evermore Mortgage Co., has been increased from \$1,442 to \$1,572.36 per month. The claim amount for Class 2 creditor, GM Financial, has been decreased from \$8,193 to \$7,938.81, as per filed Claim 3-2.
5. Debtor filed an Amended Plan (Dkt. 32), proposes 60 payments of \$2,360.00, with a 14.46% dividend to unsecured creditors.

The court is satisfied that Debtor is making efforts to propose a plan that reflects her best efforts and is proposed in good faith. Debtor set for confirmation an amended plan that seeks to remedy the Trustee's Objection and provides updated claim information for Class 1 and Class 2 claims. The hearing on Debtor's Motion to Confirm the Amended Plan is set for March 25, 2014. The court will hear any renewed or new objections to plan confirmation at that time.

The court's decision is to overrule the objection and not confirm the plan.

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

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

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

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

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 January 7, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors report gross income of \$6,911.20 on Schedule I, and a net income of \$4,654.78 after all deductions from the payroll.

It appears that Debtors have less net monthly income than they reported. Paystubs for Joint Debtor Larry Heslin show that Heslin has \$825.72 per month deducted for deferred compensation. This deduction is not reflected on Schedule I, however, and Debtors have erroneously deducted \$495.23 for retirement twice, when the paystubs reflected that there was a single deduction of \$552.90 per month for retirement. Debtor Larry Heslin's paystubs reflect a gross income of \$6,916.00 and a net income of \$4,132.42.

Debtors report the net income from Larry Heslin's wages to be \$4,654.78, which is \$522.36 higher than his actual net income. On Schedule J, Debtors report only \$87.78 per month in disposable income after living expenses. Debtors have insufficient net income to afford their living expenses, and do not have the funds to support the proposed plan payment.

Trustee's Supplemental Objection

Trustee files this Supplemental Objection in response to Debtors filing Amended Schedules I & J (Dkt. 24). Amended Schedule I resolves Trustee's concerns with Debtors' deduction reported on paystubs not reflected on Schedule I. Debtors' Amended Schedule J reduces many household expenses and Debtors did not file a declaration or any supporting documents explaining how Debtors can afford to make these changes to their household expenses.

In response to Trustee's Objection, Debtors' filed a supplemental document declaring the following:

1. Debtors reviewed their budget and reasonably decided to adjust certain expenses, which are merely discretionary and vary from month to month. The adjustments are reasonable and Debtors believe that through careful spending, they will be able to live under this standard.
2. Debtors are current with Plan payments and will continue making on time payments.

Discussion

The court's tentative decision is to overrule Trustee's Objection to Confirmation. Debtors' Amended Schedule I resolved discrepancies between Schedule I and Debtors' paystubs.

As for the changes to Debtors' expenses, the court is satisfied that they are reasonable and sustainable. The following reductions were made to household expenses:

Expense Item	Original Amount	Amended Amount
Food	\$950.00	\$800.00
Clothing	\$285.00	\$100.00
Entertainment/Rec	\$150.00	\$70.00
Charitable Contribution	\$80.00	\$20.00
Personal Grooming	\$75.00	\$40.00
Pet Expenses	\$60.00	\$35.00

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a), the objection is overruled, and the plan is confirmed. The court shall issue a minute order substantially in the following form holding that:

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

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

IT IS ORDERED that the Objection is Overruled, Debtor's Chapter 13 Plan filed on November 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. [13-35969](#)-C-13 JOSE MENDOZA AND CONCHA OBJECTION TO CONFIRMATION OF
NLE-1 PULIDO PLAN BY DAVID CUSICK
Thru #30 Thomas O. Gillis 1-29-14 [[25](#)]

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

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

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation of the Plan because it relies on a pending Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A.

Debtor's Response

Debtor set the Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. for February 25, 2014.

The court's decision is to overrule the objection as moot. The court is prepared to grant Debtor's Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. at the hearing on February 25, 2014. Therefore, Trustee's Objection will be mooted and overruled as such.

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

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

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

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

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

30. [13-35969](#)-C-13 JOSE MENDOZA AND CONCHA MOTION TO VALUE COLLATERAL OF
TOG-1 PULIDO JPMORGAN CHASE BANK, N.A.
Thomas O. Gillis 1-18-14 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7976 Cresendale, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$94,383 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 \$132,300. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$60,000. 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 J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 7976 Cresentdale, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$94,383 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtor did not file mandatory Plan Form EDC 3-080. Local Bankr. R. 3015-1(a).
2. Debtor's plan may not be Debtor's best effort under 11 U.S.C. § 1325(b). Debtor filed Schedule J (Dkt. 91), reporting average monthly expenses of \$6,448.70. The form contains two (2) line items for \$400.00 each for tax reserve for self-employed spouse. Additionally, the Schedule I (Dkt. 90), only reflects \$1,500 of gross income for the spouse with a deduction of \$251.36 for payroll taxes and social security. Neither form complies with official form B6I and official form B6J effective December 1, 2013.

Debtor's Response

Debtor provides the following in response to Trustee's Objection:

1. Debtor filed an Amended Chapter 13 Plan with Plan Form EDC 3-080 on February 13, 2014. The filing was delayed because of a issues faced in securing the final financing terms from the creditor in connection with Debtor's purchase of a 2011 Acura

MDX.

2. Debtor scheduled a monthly \$400.00 reserve for Debtor's self-employment tax since Debtor anticipates there would be a self-employment tax at the end of each fiscal year due to Debtor's spouse's self-employment status. The tax is an additional tax which is imposed on all self-employed individuals, notwithstanding whether there are been deductions for your standard payroll withholding taxes.
3. Debtor filed Amended Schedules I & J on the New Official Form B 6I and B 6J.
4. Debtor decreased food expenses from \$920.00 per month to \$850.00 in order to maintain the current \$875.00 plan payment.

Discussion

The court recognizes that Debtor has submitted a new plan for confirmation and filed required Plan Form EDC-080. However, Trustee's concern regarding the duplicated entry for the self-employment tax remains unresolved and unexplained. Debtor's Amended Schedule J contains deductions of \$400.00 for "tax reserve for self-employed spouse" at Lines 16 and 21. Debtor's monthly expenses on Line 22 includes both \$400.00 entries, for a total monthly expense of \$800.00 for "tax reserve from self-employed spouse." Meanwhile, Debtor includes a note at the end of page 2 of Form B 6J, stating that "there is a monthly \$400 reserved for self-employment tax." While Debtor's intention was to only include one \$400.00 expense, the effect of Debtor's Schedule J is to include two expenses for the tax, totaling \$800.00. The court's decision is to continue the Motion to Modify to permit Debtors to submit clarification as to why the tax reserve for the self-employed spouse is included twice on Form B 6J or to provide a supplemental Amended Schedule J reflecting the accurate tax expense.

The hearing on Debtor's Motion to Modify Plan is continued to **[date]** at **[time]**.

The court shall issue a minute order 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 the Plan is continued to **[date]** at **[time]**.

32. [11-43271](#)-C-13 CORINNE SAUVE
PJR-10 Philip J. Rhodes

MOTION TO VALUE COLLATERAL OF
C-BASS MORTGAGE LOAN ASSET
BACKED CERTIFICATES, SERIES
2006-CB4
1-30-14 [[208](#)]

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 January 24, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3125 Orchard Park Court, California. The Debtor seeks to value the property at a fair market value of \$475,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$783,987.13. Ocwen Loan Servicing, as current holder of the C-BASS Mortgage Loan Asset Backed Certificates, Series 2006-CB4, holds second deed of trust secures a loan with a balance of approximately \$198,320.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Ocwen Loan Servicing, secured by a second deed of trust recorded against the real property commonly known as 3125 Orchard Park Court, Loomis, 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 \$475,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 January 23, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3125 Orchard Park Court, California. The Debtor seeks to value the property at a fair market value of \$475,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$783,987.13. Ocwen Loan Servicing, as current holder of the C-BASS Mortgage Loan Asset Backed Certificates, Series 2006-CB4, holds second deed of trust secures a loan with a balance of approximately \$198,320.00. The property is also encumbered by a third deed of trust held by Key Bank, N.A. securing repayment of Key Bank's claim of \$68,129.05. Therefore, the respondent creditor's claim secured by a third 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 Key Bank, N.A., secured by a third deed of trust recorded against the real property commonly known as 3125 Orchard Park Court, Loomis, 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 \$475,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The motion complies with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), which requires a copy of the credit agreement. The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreement. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007). Although the declaration of Debtor Corinne Suave in Support of the Motion to Approve the Loan Modification, filed as Dckt. No. 205, provides little information about the material terms of the agreement, Exhibit A shows the terms of the loan modification agreement. Exhibit A in support of the motion, filed as Dckt. No. 206, is a copy of the loan modification agreement.

REVIEW OF THE MOTION

Exhibit A appears to be a Loan Modification Agreement, offered by Ocwen Loan Servicing, LLC, to modify the terms of Debtor's home loan obligations for the real property commonly known as 3125 Orchard Park Court, Loomis, California.

Ocwen Loan Servicing ("Ocwen"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to a monthly payment amount of principal and interest of \$1,472.07 for the first sixty months, \$1,710.21 for the next 12 months, and then \$1,802.37 for the remaining 191 months. The entire loan balance, including the non-interest bearing portion, is fully due on December 1, 2035. The loan modification agreement also specifies that Ocwen will collect a monthly escrow amount for property taxes and insurance. Property taxes on the property were \$5,554 annually, or approximately \$463 per month.

The loan modification agreement increases the principal amount of the loan from \$738,837.02 with interest at 4.475% per annum to \$847,772.12 with interest at 2.0% for the first sixty months. Thereafter, the interest rate increases to 3.0% for the next twelve months and 3.375% for the remaining 191 months. Additionally, the agreement increases the principal amount of the loan from \$738,837.02 with interest at 4.475% per annum to \$847,772.12 with interest at 2.0% for the first sixty months. Thereafter, the interest rate increases to 3.0% for the next twelve months and 3.375% for the remaining 191 months.

OPPOSITION BY THE CHAPTER 13 TRUSTEE

The Trustee opposes approval of the Loan Modification Agreement, on the basis that Debtor may be delinquent in \$700.00 in plan payments to date. Debtor reconverted to Chapter 13 on October 16, 2013. Debtor has made on payment of \$350.00, which was posted on January 27, 2014, to the Trustee. Another payment of \$350.00 will be due on February 25, 2014. Trustee has filed and set for hearing on February 19, 2014, a Motion to Dismiss, TSB-3.

Debtor's proposed plan was denied at a hearing on January 28, 2014. Debtor has not filed an amended plan as of this date.

UNIDENTIFIABLE PARTY TO THE CONTRACT

Though the Debtors want to enter into a Loan Modification Agreement with some entity named Ocwen Loan Servicing, the court cannot identify this entity as a creditor that has a claim to modify in this case under 11 U.S.C. § 101(10)).

The court has expressed uncertainty in the past as to how Ocwen Loan Servicing, LLC, can name themselves as "Lender" in a Loan Modification for an obligation that appears to be owed to real creditor or lender, e.g. lending institutions and banks like Onwest Bank, FSB; Bank of America, N.A.; Wells Fargo Bank, N.A.; etc. The court has repeatedly stated that it will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Onwest Bank, FSB.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor.

Here, the court is faced with conflicting identifications of the lender entity. Debtor states that she would like to enter into a loan modification agreement with Ocwen Loan Servicing, which has not been shown to possess the legal rights to enforce the first deed of trust on Debtor's property. The court is troubled by having a services company appearing to be the party contracting with this consumer debtor to modify the loan.

The Official Registry of Claims in this case lists three secured claims from Ally Financial, Keybank, N.A., the Placer County Tax Collector, and JPMorgan Chase Bank, N.A. Proof of Claim Nos. 1, 2, 5-1, and 7-1. An

examination of the claims registry shows that the claim of Ally Financial is secured by a lien on a vehicle, a GMC Yukon; and that the claim of the Placer County Tax Collector's Office covers unpaid taxes and taxes that will continue to accrue on Debtor's real property. Claim Nos. 1 and 5-1. The claim of Keybank, N.A., in the amount of \$68,139.05, appears to be secured by a mortgage note on Debtor's residence at 3125 Orchid Park Court, Loomis, California, according to the Deed of Trust attached on Proof of Claim No. 2. The court also notes that Debtor has stated that Key Bank, N.A., holds a third deed of trust in Debtor's residence.

It follows that JPMorgan Chase Bank, N.A., which filed Claim NO. 7-1, may be the real creditor in interest and holder of the first deed of trust on Debtor's residence at 3125 Orchard Park Court, Loomis, California. On February 1, 2012, JPMorgan Chase Bank, N.A., filed a Proof of Claim in the amount of \$783,987.13. The basis for the claim is listed as "Mortgage Note," with an arrearage amount of 47,791.60. The basis for perfection is indicated as "Deed of Trust" on the Proof of Claim Form. The Claimant checks off the box signifying that JPMorgan Chase Bank, N.A., is the creditor, and the form is signed under the penalty of perjury by Olen Gulab, who purports to be the "Attorney for Servicer." There is no Deed of Trust attached to the Proof of Claim, and no further identification of JPMorgan Chase Bank, N.A., or any other entities as the lender, creditor, servicer, or any other parties in interest.

If JPMorgan Chase Bank, N.A., is the creditor, then it should clearly state so in its Loan Modification Agreement. If Ocwen Loan Servicing is an authorized agent, then JPMorgan Chase Bank, N.A. should be clearly shown as the party in the contract and Ocwen Loan Servicing should execute the contract for JPMorgan Chase Bank, N.A.. A least sophisticated consumer debtor should not be presented with a "pick a name, any name" situation in which a name other than his or her creditor is placed on a purported loan modification. If Ocwen Loan Servicing is merely a fictitious name by which JPMorgan Chase Bank, N.A. is doing business, the court cannot see the reason for having that fictitious name placed in the Loan Modification Agreement. One would question whether it is being done for an improper purpose, such as to confuse least sophisticated consumers into later being duped into believing that they did not have an effective modification with the BANK. FN.1.

FN.1. If a fictitious name is being used by the actual creditor, implications arise under the Federal Fair Debt Collection Practices Act. See 15 U.S.C. § 1692a, "Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph [exclusion for the original creditor], the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."

The parties will have to accurately and correctly identify the "Creditor" who is entering into this Loan Modification Agreement, have the Agreement properly identify the creditor, and if the Agreement is being executed by an agent, that the agent be correctly identified and proof of its authority provided to the court.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion to Approve the Loan Modification is denied without prejudice.

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 January 7, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 7, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 has filed a Limited Objection to confirmation of Debtors' Chapter 13 Plan.

Trustee's Limited Objection to Confirmation of the Chapter 13 Plan

Trustee points out that the Additional Provisions Section of the Plan, Section 6.02, states that "In months 1 through 28, the dividend to Class 1 creditors shall be paid as follows: Wells Fargo Bank, N.A. \$386," then "In months 29 through 40 the dividend to Class 2 creditors shall be paid as follows: Wells Fargo Bank, N.A. \$284."

Trustee believes that Debtor was referencing the dividend of the prepetition arrears, and that Class "2" in the second part of Section 6.02 was supposed to have stated Class "1." Trustee has no objection to Debtor clarifying these issues in the order confirming the plan.

Debtor's Reply to Chapter 13 Trustee's Opposition

Debtor acknowledges that the classification set forth under Section 6.02 of the plan is a typographical error, and should indicate that Wells Fargo Bank, N.A. is a Class 1 Creditor. Debtor agrees with the proposed correction, and has filed as Exhibit A, an order revising the proposed 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.

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, and Debtor's Chapter 13 Plan filed on January 10, 2014 is confirmed, with a revision stating that "Wells Fargo Bank, N.A. is a Class 1 Creditor with the following dividends: In months 1 through 28 the dividend shall be \$386. In Months 29 through 30 the dividend shall be \$284."

IT IS FURTHER ORDERED that counsel for the Debtor transmit the proposed order to confirm the Chapter 13 Plan 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.

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 January 10, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion to Approve the Loan Modification is denied without prejudice. No appearance required. The court makes the following findings of fact and conclusions of law:

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Debtors are seeking permission from the court to enter into a loan modification agreement.
- B. Debtors identify the Lender in this agreement as The Bank of New York Mellon.
- C. The Lender has allegedly offered Debtors a modification, the terms of which are detailed in the document attached as Exhibit "A" to this Motion.
- D. The "Bank of New York Mellon," whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment.
- E. The monthly payment will be \$2,100.06, which includes taxes and insurance. For years 1-5, the interest rate will be 2.000% and after the 5th year, will adjust up yearly to 4.250% in year 8.

F. The new, modified loan balance is \$393,367.23. The past due amounts will be added to the principal balance.

G. The Debtors have attached Exhibit A, which is a copy of the actual loan modification agreement, and a summary of the terms of the modified loan to preface the attached agreement.

The attached "Loan Modification Agreement," designated as Exhibit A on Dckt. No. 60, appears to be a modification agreement between the borrower, Joint Debtor James Lee Perry, and Bank of America, N.A. Dkc.t No. 60 at 6. The face of the agreement states that the document was prepared by Home Retention Services, Inc. In the lines above Section 1, Bank of America, N.A., is identified as the "Original Lender/Beneficiary Lender or Servicer ('Lender')." Likewise, the summary of the material provisions of the loan modification agreement, appears to have originated with the Bank of America N.A. Bank of America's Logo, and the Notice Date and redacted Loan Number appear on the upper right hand corner of the Loan Modification Summary Document. *Id.* at 6.

Debtors' Declaration in Support of the Motion, Dckt. No. 59, describes the Bank of New York Mellon as the holder of the First Deed of Trust on the property commonly known as 127 Rutherford Drive, Vacaville, California. ¶ 3, Declaration, Dckt. No. 59 at 2. The Declaration further states that the Bank of New York Mellon is a Class 4 Creditor. *Id.* at 2. Debtors' filed evidence provide no clarification on who the real lender is in this case.

Debtors' identification of the Bank of New York Mellon as the Lender, empowered to enter into a loan modification agreement with Debtors, in their Motion and Declaration directly contradicts the Lender identified in the attached modification agreement. The pleading and supporting documentation do not clearly state the grounds upon which relief is sought. Debtors make no attempt to even correctly identify the Lender, and is in effect, asking the court to issue an order against unidentifiable entities. Debtor state that they have entered into a loan modification agreement, but identify the Lender as an entity that is different from that which is represented in the Home Affordable Modification Agreement. Debtors do not elaborate on the relationship between the two entities in the motion, and the evidence offered further muddles the court's understanding of the identity of the real creditor in interest.

The court also notes that the Bank of New York Mellon FKA, as *Trustee* for the Bank of America, N.A., filed Proof of Claim 10-1, which clearly identifies the Bank of New York Mellon FKA the Bank of New York as *Trustee* and the creditor. The court is baffled as to why Debtor's counsel does not take notice of this identification, and instead refers to the Lender as a separate and individual entity altogether. According to the Lender's identification as the Bank of New York Mellon FKA the Bank of New York as *Trustee* for the Bank of America, N.A., the creditor would not be identified as the Bank of New York Mellon, but in its fiduciary capacity as "The Bank of New York Mellon, as *Trustee*." Serving as a trustee is a different capacity than the Bank of New York Mellon merely performing its banking responsibilities.

A Motion to Approve a Loan Modification that does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The

court cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Further, a motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a).

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

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

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

IT IS ORDERED that the Motion to Approve the Loan Modification is denied without prejudice.

38. [13-33081](#)-C-13 ROSA/CARLOS HERRERA
MHL-1 Michael H. Luu

MOTION TO CONFIRM PLAN
1-6-14 [[30](#)]

Thru #39

CASE DISMISSED 1/15/14

Final Ruling: The case having previously been dismissed, the Motion is denied as moot.

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

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

The Motion to Confirm PLAN 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 denied as moot, the case having already been dismissed.

39. [13-33081](#)-C-13 ROSA/CARLOS HERRERA
MHL-2 Michael H. Luu

MOTION TO AVOID LIEN OF REAL
TIME SOLUTIONS, INC.
1-6-14 [[35](#)]

CASE DISMISSED 1/15/14

Final Ruling: The case having previously been dismissed, the Motion is denied as moot.

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

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

The Motion to Avoid the Lien of Real Time Solutions, Inc. 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 denied as moot, the case having already been dismissed.

40. [13-34984](#)-C-13 DOUGLAS HAYCOCK
WSS-1 W. Steven Shumway

OBJECTION TO CLAIM OF ALLY
FINANCIAL, INC., CLAIM NUMBER 3
1-3-14 [[19](#)]

Final Ruling: The parties having entered into a stipulation, agreeing that Debtor shall provide for payment of Secured Creditor's claim on in the amount of \$16,500 at a 4% interest rate, Debtor withdraws the instant objection. The Debtor having withdrawn the Objection to Claim of Ally Financial, Inc., pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Claim of Ally Financial, Inc., was dismissed without prejudice, and the matter is removed from the calendar.**

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 January 23, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value the secured claim of Patelco Credit Union, which was set for hearing on January 28, 2014. The Motion to Value the Secured Claim of Patelco Credit Union, SL-1, was granted by this court on February 12, 2014. Civil Minute Order, Dckt. No. 33. Thus, this part of Trustee's Objection is resolved.

Trustee also objects to the confirmation of the Plan, however, on the basis that the plan is not Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$1,105.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor's monthly income listed on Schedule J reflects an income of \$1,150.00, which is \$45.00 more than Debtor's Plan payment, per month. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee has filed an opposition to confirmation of the Plan on the following grounds:

1. The Motion to Confirm Modify Plan does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013, because it does not plead with particularity the grounds upon which the request for relief is based. The Motion merely states, "This Motion is based on these moving papers, Debtor's supporting Declaration, the records and pleadings on file herein, and upon other such oral and documentary evidence as may be adduced at the hearing on this motion." Motion, Dckt. No. 5.

The court's review of Debtors' pleadings and supporting documentation reveals the Motion is deficient in stating the details of the proposed Amended Chapter 13 Plan, the exact relief sought, the legal authority for the relief requested, and the evidence on which Debtors' request to confirm is based. As this court has cautioned to many attorneys, in countless hearings on contested matters, trials, and adversary proceedings in the past, not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments.

Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Additionally, from reading the Motion, the court has no idea of the grounds on which Debtors are requesting that their Chapter 13 Plan be confirmed. The court has no way to determine, from the Motion, the factual contentions and legal authority on which Debtors request that relief should be accorded. Debtors instruct the court to read "the records and pleadings on file herein, and upon other such oral documentary evidence as may be adduced at the hearing on this motion." It is not, however, for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movants.

2. Trustee is also unable to determine the plan payments proposed. Under the confirmed plan, Debtors' payments are \$1,703.44 for 60 months. Section 1.01 of Debtors' proposed modified plan indicates that the monthly payments will be \$1,703.44. However, the additional provisions state that the monthly plan payments will be \$0.00 for months 5-8. Debtor does not specify in the additional provisions what payments were made for months 1-4, or what they will be for months 10-40. Trustee's records reflect that Debtor has paid \$6,813.44 to date, and is \$6,814.08 delinquent under the confirmed plan.

Debtors have not filed Amended Schedules I and J to accurately reflect their income and expenses. Debtors' Declaration indicates that they have applied for Social Security benefits on behalf of Joint Debtor, and expect to receive an arrears payment around the middle of February for approximately \$9,000 covering a time period from June 2013, to present. Debtors did not file an Amended Schedule I to include that Social Security. Joint Debtors' income on their prior Schedule I filed May 8, 2013, Dckt. No. 1, was \$0.00.

3. The additional provision of Debtors' modified plan proposes the Class 1 monthly payment to Bertha M. Kristiansen to be increased for months 9-60 to \$998.63. Payment to this creditor under the confirmed plan is \$720.00 and Trustee has disbursed \$3,600.00. Barbara Marcotte (Successor to Bertha Kristiansen) filed a secured claim on June 3, 2013 (Court Claim #2) for \$60,617.64, which includes arrearage of \$12,777.44. Two attachments to this proof of claim (Mortgage Proof of Claim Attachment, page 4, and Promissory Note, page 5) indicate the mortgage payment is \$719.62.
4. Debtors now propose to increase the mortgage payment from \$720.00 to \$998.63 effective February 2014 (Month 9). Trustee is uncertain whether this increase is an attempt to cure the ongoing mortgage delinquency (currently \$2,160.00), or if Debtors are attempting to

pay ahead, which would not be in the best interest of the remaining creditors. Trustee believes if Debtors are attempting to bring the mortgage current, adding post petition arrears to Class 1 would be a more viable solution. Additionally, the additional provisions do not specify what the payments were for Months 1-8, nor are payments disbursed during that time by the Trustee authorized.

Based on the foregoing, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2014. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee has filed an objection to Debtor's Motion to Confirm. Trustee asserts that,

1. It appears that Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Section 6 of Debtor's plan filed on January 6, 2014, calls for payments of \$361.50 for 2 months and \$482.00 per month for 58 months. Debtor is delinquent \$53.00. To date, Debtor has paid \$1,634.00 into the plan. The next scheduled payment of \$482.00 is due on February 25, 2014.
2. No Declaration of Debtor in support of the Motion to Confirm was filed. Debtor bears the burden of proof in meeting the requirements of confirmation. *In re Wolff*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982). Debtor does not provide any factual evidence as to their ability to make the plan payments, evidence of good faith, evidence that he meets the Chapter 7 liquidation test, and other factors and components as mandated by 11 U.S.C. § 1325(a) in presenting a confirmable plan.
3. Debtor proposes to pay the Claim of the Internal Revenue Service as Class 2, but has not filed a motion to value the secured claim of that creditor and set it for hearing. The Internal Revenue Service filed a claim on November 8, 2013 (Claim No. 2). The secured portion of the claim is \$101,400.00. The Plan does not pay in sufficient funds to pay the entire claim in full.

Furthermore, the Declaration of Jim G. Price, filed on January 6, 2014, Dckt. No. 42 expresses Debtor's intent to request an

evidentiary hearing to determine Debtor's tax liability to the Internal Revenue Service, and to file a motion requesting court approval for Debtor to hire and pay through the plan a certified public accountant to testify at the evidentiary hearing. Debtor has neither requested an evidentiary hearing, or filed a motion requesting the employment of an accountant to serve as an expert witness in such a hearing.

4. Section 2.06 of the Plan calls for \$2,250.00 in fees to be paid through the Plan. However, Section 2.07 of the Plan indicates that \$0.00 will be paid each month towards administrative expenses. Trustee is unable to disburse any attorney fees without the information in Section 2.07.

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

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

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

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

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

44. [13-23191](#)-C-13 ESHIARI BALAWAG AND CONTINUED MOTION TO CONFIRM
MAC-4 ERLINDA MUTUC-BALAWAG PLAN
Marc A. Carpenter 11-30-13 [[64](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2013. 42 days' notice is required. That requirement was met.

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

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

JANUARY 14, 2014 HEARING

The court's decision continued the hearing on the Motion to Confirm the Plan to this date, and established a deadline of February 5, 2014 for Debtors to file supplemental pleadings.

Trustee's Opposition

The Chapter 13 Trustee initially objected to the confirmation of Debtors' Plan for two reasons: it is unclear whether Debtors can afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and Section 2.10 of the Plan does not list Creditor's Name for the collateral description of Real Property located at 2820 Clarence Lane, Fairfield, California and for the 2012 Toyota Camry.

On the issue of Debtors' ability to make payments, Debtors filed a Declaration on November 20, 2013, stating that they have restructured their Chapter 13 Plan and intend to surrender their home and rent an apartment. Lines 18-19 states that Debtors intend to rent a room to add income of \$300.00 each month to help with the budget. Debtors' Amended Schedule I filed November 30, 2013, includes rental income in the amount of \$300.00. Debtors' Amended Schedule J now lists a rental expense in the amount of \$1,300.00. It was unclear to Trustee whether Debtors had vacated their residence located at 2820 Clarence Court and if the rental income of \$300.00 and the rent expense of \$1,300 are actual or anticipated figures.

Toyota's Opposition

In its opposition, Secured Creditor, Toyota Motor Creditor Corporation, asserted that Debtors agreed and became obligated to pay the sum of \$26,034.79 for the financed purchase of the subject property. Creditor claimed that it has a purchase money security interest securing the debt which is the subject of its claim against Debtors and the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of Debtor.

Creditor objected to the \$16,175.00 valuation of the collateral under Debtor's Proposed plan. Furthermore, Creditor objects to the Debtors' classification of its secured claim as one subject to 11 U.S.C. § 506(a) when, the subject vehicle was purchased by Debtor 141 days prior to their filing of the above-captioned case and, therefore, Creditor's claim is not subject to §506(a).

Creditor further objected to the \$302.20 monthly adequate protection payments offered it under Debtors' proposed Plan in that the value of Secured Creditor's security will depreciate at a much higher rate than that at which Secured Creditor will receive adequate protection payments under the Plan. Moreover, pursuant to the terms and conditions of the prevailing Security Agreement, Debtors agreed to keep the property properly insured at all times in an amount and with an insurer acceptable to Secured Creditor. Debtor further agreed to make the loss payable clause of any and all such insurance coverage payable in the name of Secured Creditor for as long as Debtor was indebted to it. Creditor discovered that it had not been provided with valid, written proof of Debtor's current insurance coverage for the property. Thus, Creditor contends that Debtors are operating the property without having any insurance coverage thereon and as a result, Creditor will be forced to purchase its own insurance coverage for the property which was, and at all times herein mentioned is, in Debtors' possession.

The court notes that Debtors did not file a Motion to Value the Collateral, the 2013 Toyota Corolla Debtors purchased on October 2012. Debtors listed the value of the secured claim as \$16,175.00, without having filed a motion to re-value the lien pursuant to 11 U.S.C. § 506(a) and determine the actual value of Creditor's secured claim. Because of this unsupported valuation, in addition to other deficiencies of the Plan as presented by the Trustee and Creditor, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

SUPPLEMENT TO MOTION TO CONFIRM

Response to Trustee's Opposition

Debtors filed a Supplement to the Motion to Confirm on February 5, 2014, stating that the issues raised in Trustee's Opposition have been resolved. Debtors state that the budget figures submitted by the Debtors in the pending motion are from their Revised Schedule "I" filed with the Court as an exhibit to Debtors original motion filed on November 29, 2013. Exhibit "A", Dckt. No 60. Debtors have secured a renter who will live in their new residence and who has agreed to pay \$300 per month for rent. The name of the renter has been given to Debtors' counsel.

Debtors state that they have sold unnecessary household goods, packed their belongings, and are prepared to move. Debtors have been working

with two rental agencies and a real estate agent to facilitate the transition and work each day to find a new home. Housing in the area is currently very difficult and \$1,300.00 per month represents their target budget number for a new home. Debtors' ability to make the Chapter 13 payment of \$621.00 per month is based on the budget numbers set forth in Exhibit A.

Response to Toyota's Objection

Debtors believe they have satisfied the objection of Toyota and will be able to make the payment demanded by Toyota as part of their Chapter 13 plan payment. Debtors state that evidence of insurance for the vehicle has been received and will be provided to counsel for Toyota.

The court notes that in their prior response to Toyota's Objection, Debtors agreed with Toyota that the replacement value of the vehicle being acquired from Toyota by Debtors is \$24,871.19. Debtors also registered their agreement that the Chapter 13 Plan should be amended to include a monthly payment for the 2013 Toyota Corolla of \$466.51 per month. Dkct. No. 78. Debtors, however, did not request that the amendment be incorporated in the court's order confirming the plan, and it does not appear that Debtors have filed a new plan.

Debtors also requested that the names of the creditors not set forth in the Chapter 13 Plan, for the real property located at 2820 Clarence Lane, Fairfield, California and for the 2012 Toyota Camry be incorporated into the court's order confirming Debtors' Plan. Debtors do not supply these names however, and it is not the responsibility of the court to speculate and draft the terms of Debtors' Plan, especially when said plan is currently being presented to the court for confirmation. Thus, Motion to Confirm the Plan is denied.

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

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

The Motion to 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor is delinquent \$2,590.00 under the proposed plan. The case was filed on February 28, 2013, and 23 payments have come due under the plan; payments totaling \$59,570.00 have become due under the proposed modified plan. As of January 7, 2013, Debtor has paid a total of \$56,980.00 into the plan and commencing January 25, 2014, the plan payment shall be \$2,590.00 for the remainder of the plan. Debtor has paid the Trustee \$56,980.00 with the last payment of \$2,210.00 posted on January 9, 2014.

Trustee is also uncertain if the proposed modified plan will complete in 60 months. The additional provisions of the proposed modified plan states in section 6.02 that the claim of the Internal Revenue Service will be paid by Debtor directly in accordance with an offer and compromise that is being negotiated between Debtor and the Internal Revenue Service. There appears to be nothing on file about such negotiations. The Internal Revenue Service filed a priority proof of claim in the amount of \$27,334.70 on March 28, 2012. If negotiations between Debtor and the Internal Revenue Service are non-existent, the proposed modified plan will be overextended and will complete in 106 months. Trustee is requesting proof to be filed showing these negotiations.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

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

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 January 6, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 6, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan on the following grounds:

1. The Plan does not provide a monthly dividend for attorney fees in Section 2.07.
2. The Plan does not provide how property of the estate will vest in Section 5.01 of the Plan.
3. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Amended Schedule J reflects \$900.00; however, Debtor's Plan proposes a plan payment of \$1,000 in month 6 through 60. Debtor has not indicated how he will be able to afford the increase in plan payments.
4. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$900.00 for 5 months, then \$1,000.00 for 55 months with an 11% dividend to the unsecured, which totals \$3,482.90.
5. Debtor filed Amended Schedule J on January 3, 2014, and made the following changes to the expense s without any evidence or explanation of charges:

- Rent was \$1,500 and is now \$500.00
- Electricity and heat was \$0.00 and now \$100.00
- Water, sewer, and garbage was \$0.00 and now is \$50.00
- Telephone, cellphone, internet, satellite, and cable was \$0.00 and is now \$71.00
- Food and housekeeping supplies was \$300.00, and now is \$550.00
- Clothing, laundry, and drycleaning was \$50.00, and is now \$125.00
- Personal care expenses were \$50.00 and is now \$100.00
- Medical and dental was \$0.00 and is now \$50.00
- Transportation was \$400.00 and is now \$150.00
- Entertainment was \$0.00 and is now \$100.00
- Charity was \$0.00 and is now \$150.00
- Vehicle insurance, previously listed as \$200.00, is now \$230.00
- The support of Debtor's mother, Ruth Handy, was \$0.00 and is now \$500.00

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

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

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

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

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

Thru #49

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (Case No. 13-30287) was dismissed on January 8, 2014, after Debtors could not confirm a plan. See Order, Bankr. E.D. Cal. No. 13-30287-A13J, Dckt. 76, January 8, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

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

Here, Debtors state that they have made significant efforts and payments in the prior case, in that they paid to the Trustee the aggregate sum of \$2,500.00 over the 5 month duration of that case. While Debtors' prior counsel had made some significant efforts in the prior dismissed case, Debtors state that the staff in that office may not have spotted legal issues and formulated a strategy quickly enough to facilitate a successful rehabilitation of their bankruptcy case.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtors state that they have taken certain measures which already have changed their initial circumstances. They have obtained a rental tenant for their real property located in Florida, which enhances their financial circumstances. Debtors claim that they may have been the victim of unconscionable and predatory lending practices, and with this new filing would like to address those issues.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$65,000.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1071 Little River Drive, Miami, Florida. The Debtor seeks to value the property at a fair market value of \$65,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust and only deed on the real property is held by Valley Bank, and it secures a loan with a balance of approximately \$69,272.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is under-collateralized. The creditor's secured claim is determined to be in the amount of \$65,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of secured by a first deed of trust recorded against the real property commonly known as 1071 Little River Dr., Miami, Florida, is determined to be a secured claim in the amount of \$65,000.00, 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 \$65,000.00 and is encumbered by a lien securing a claim which exceeds the value of the Property.

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 January 8, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 8, 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.

51. [13-35897](#)-C-13 HECTOR/GENARA MILLARE
JT-1 Aaron C. Koenig
Thru #52

MOTION TO VALUE COLLATERAL OF
THE BANK OF NEW YORK MELLON
1-21-14 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 21, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 4135 Sheffield Way, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$450,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$673,571.22. Creditor The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$100,712. This loan is being serviced by Real Time Resolutions. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 4135 Sheffield Way, 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 \$450,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on January 29, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan relies on the pending Motion to Value Collateral of The Bank of New York Mellon, which is set for hearing on this same date. Trustee states that if the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claims in full.

The court is set, however, to grant the Motion to Value the Secured Claim of the Bank of New York Mellon, JT-1, and has determined the value of the secured claim of the Bank of New York Mellon to be \$0.00. Because Trustee's singular objection to the plan has been resolved, 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.