UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 25, 2014 at 3:00 p.m.

---

1. 09-46400-E-13 ELSA OWENS — MOTION TO MODIFY PLAN
SAC-1 Scott A. CoBen — 1-6-14 [56]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January . By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. 13-31900-E-13 TOG-3 BENJAMIN/MARGARITA DUENAS Thomas O. Gillis MOTION TO VALUE COLLATERAL OF BANK OF NEW YORK MELLON 1-21-14 [40]

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.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8414 Kingmont Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of $215,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $340,000.00. Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately $28,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v.*

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 8414 Kingmont Way, Elk Grove, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $215,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. 13-34801-E-13 ESTHER HWANG — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
NLE-1 Eric J. Gravel — 12-26-13 [20]

CONT. FROM 1-28-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 26, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Trustee has continued the 341 meeting to February 20, 2014 as he has not completed his investigations.

Trustee states that Debtor has indicated on Schedule I that they have been self-employed in a collectible business for 15 years but did not schedule the business on Schedule B, which may mean the plan does not pay unsecured creditors at least what they would receive in a Chapter 7.

The Trustee also states the plan does not appear the Debtor's best efforts, 11 U.S.C. § 1325(b). The Trustee has reviewed six months of bank statements provided by the Debtor showing that the Debtor has more income, an average in deposits of $12,000.00 per month rather than the $5,206.00 listed on Schedule I and Form 22C.

Additionally, the Trustee states that the Statement of Financial Affairs showed annual income in 2011 of $61,349.00, 2012 of $47,778.00, and 2013 year to date of $52,000.00 where it was dated November 20, 2013. However, Schedule I reflects a monthly income of $5,206.00, which would be $62,472.00 of annual income. Trustee states that based on these documents, it is not clear whether the Debtor can afford the plan payments of $122.00. Trustee is also concerned that Debtor has traveled to Thailand in the last few months and to South Korea several months before but only lists a travel expense of $143.00.

The Trustee states he has also reviewed the Debtor's Business website and discovered that the business website includes a solicitation for contributions to an organization it describes as a charity, Pandora's Hope. Schedule I & J and Statement of Financial Affairs, do not show charitable contributions or charitable contributions of $100 or more in the last year. The Trustee seeks to verify the amounts contributed to this charity, and to ascertain that this charity is in active status in California to determine it qualifies under 11 U.S.C. § 1325(b)(2)(A)(ii). The Trustee wants to make certain that not only is the plan the Debtor's best efforts, (11 U.S.C. § 1325(b)), but that the Debtor is complying with applicable law so the plan as proposed complies with applicable law, 11 U.S.C. § 1325(a)(l)&(3).

DEBTOR'S DECLARATIONS

Debtor filed a Declaration on January 21, 2014, stating that she owns a 50% interest in the business known as esther.com, LLC and that Henry Baba owns the other half. Debtor states Mr. Baba funds the account when needed and at the time of filing, there was about $7,000.00 in re-saleable inventory. Debtor states that the entire inventory was paid for by a loan from Henry Baba to the LLC and that she did not contribute cash to the purchase of any inventory. Debtor states that Mr. Baba controls the financial affairs of her account, depositing month from his own businesses and advancing money when needed.

Debtor states her travel expenses are paid for my her fiancé or advanced by clients.

Debtor also filed the Declaration of Henry Baba stating his interest in esther.com, LLC.

CONTINUANCE

While Debtor's declarations addressed some of the issues raised by the Trustee, it appears the Trustee needs more time to investigate outstanding issues with Debtor and her business. The court granted the continuance to February 25, 2014, which is after the continued meeting of creditors.

SUPPLEMENTAL DECLARATION OF STANLEY HOGG

On February 13, 2014, Debtor filed the Declaration of Stanley Hogg, stating that he has paid all of the Debtor's travel expenses to Korea and Thailand. Mr. Hogg states that he shares a joint account with Debtor that he uses continually. This included depositing a monthly average of approximately $7,219 into the account. Mr. Hogg states that he deposited approximately $18,700 into the account as a contribution to the purchase of the real property located at 9987 Macabee Lane, Elk Grove, California.

DISMISSAL OF OBJECTION TO CONFIRMATION

On February 21, 2014, the Chapter 13 Trustee filed a Notice of Withdrawal of Objection to Confirmation. The Chapter 13 Trustee having filed a Notice of Withdrawal, the withdrawal being consistent with the opposition filed to the motion, no prejudice to the responding party appearing by the dismissal of the Objection, the court construing the Notice of Withdrawal to be a request for the motion to be dismissed without prejudice, the Trustee having the right to request that the court dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bank. P. 9014 and 7041, and no issues identified by the court with respect to dismissal of this Objection, the court dismisses the Objection to Confirmation 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 Objection to Confirmation filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, the Trustee moving to dismiss this Objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, no opposition having been filed, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation is dismissed without prejudice. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

4. 13-34303-E-13 RAYMOND CLIFFORD AND RHONDA WILSON
David Ndudim

MOTION TO CONFIRM PLAN
1-7-14 [30]

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. 42 days' notice is required.

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

The court's tentative decision is to 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. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to properly designate a Docket Control Number. Local Bankruptcy Rule 9014-1(c) states the requirements for a Docket Control Number with examples. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

TRUSTEE'S OPPOSITION

The Trustee opposes confirmation offering evidence that the Debtor is $170.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Trustee states that the Debtor failed to provide the plan term (number of months) for payments by the Debtors in section 1.03 of the plan.

Additionally, the Trustee states the plan fails to provide how property of the estate will vest in section 5.01 of the plan.

Furthermore, the plan relies on a pending Motion to Value Collateral of Land Home Financial Services. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full.

Trustee argues that Debtor cannot make the payments as Debtor filed Schedule I on December 17, 2013 with additional income of $267.00 per month but failed to indicate the source of the additional income.

Trustee argues that the Plan is not the Debtor's best effort. The Debtor is under median income and proposes plan payments of $245.00 per month, but the Debtor fails to specify the plan terms, with a .1% dividend to unsecured creditors (which totals $176.79). The Debtors Schedule J reflects payments for the Bradshaw Motor Home in the amount of $245.00 which is deducted twice. Trustee states Debtor has additional $245.00 to pay into the plan each month.

The Trustee also states that the Debtor has failed to resolve the Trustee's prior Objection to Confirmation, TSB-1, which was overruled as moot on January 14, 2014, as Debtor filed an amended plan. Trustee states the following additional objections:

> Debtor has failed to amend the Petition to include the middle names of Debtors.
>
> Debtor Raymond Clifford has failed to provide the Trustee with Employer Payment Advices received 60 days prior to filing.
>
> Debtor cannot make the plan payments, with the petition indicating that the Debtor's filing fee is to be paid in installments but Debtor fails to list an expense on Schedule J.
>
> Debtor fails to provide for Trinity Financial Services' 2nd Deed of Trust listed on Schedule D.
>
> Debtor fails to provide a monthly dividend for attorneys fees in section 2.07 of the plan.

CREDITOR'S OBJECTION

Creditor Trinity Financial Services, LLC objects to Debtor's proposed plan stating that it has filed a timely proof of claim in this case, and the plan does not provide for payment of its claim and it objects to the Debtor's attempt to value its claim.

On February 10, 2014, the Court determined that the secured claim of Creditor Trinity Financial Services, LLC was $27,403.71. Dckt. 55. The Plan, as now before the court, does not provide for the payment of this claim

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

5. 13-35604-E-13 MDE-1 — RENE/MARIA RESTUA — Seth L. Hanson — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. — 1-14-14 [14]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2014. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on February 6, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

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

6. 13-36004-E-13 DMA-1 ALLEN/LORI DOSTY David M. Alden — MOTION TO VALUE COLLATERAL OF MERCEDES-BENZ FINANCIAL SERVICES USA, LLC 1-18-14 [24]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, parties requesting for notice, and Office of the United States Trustee on January 18, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of non-opposition. Here, the respondent creditor filed an opposition 21 days prior to the hearing on February 4, 2014.

The court's tentative decision is to grant the Motion to Value. 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:

Service of process issue

The proof of service shows that Debtors served Mercedes-Benz Financial Services USA, LLC, the creditor, ("Creditor") at a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

However, the service issue has been waived, as Creditor filed an opposition in response to the motion.

Debtors' motion

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of a 2010 Mercedes-Benz E-350 4 door Sedan Sport, which they testify is in good condition with approximately 68,752 miles. The Debtors seek to value the property at a replacement value of $23,203.00 as of the petition filing date. As the owners, 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). Debtors also provide appraisals from Kelly Blue Book and CarMax, which value the Vehicle at $23,203.00 and $23,000.00, respectively.

The lien on the vehicle's title secures a purchase-money loan incurred in 2011, more than 910 days prior to filing of the petition, with a balance of approximately $31,939.14.

Creditor's opposition

Creditor files an opposition alleging that Debtor's valuation was based on an incorrect standard, i.e., the Kelley Blue Book "private party – good condition" value, and the CarMax "appraisal offer." Creditor contends that under 11 U.S.C. § 506(a), the correct standard for valuation of personal property is "the price a retail merchant would charge" and such price is most accurately measured by the "retail" value of the vehicle. In determining the retail value, courts routinely find industry guides are appropriate evidence of value. *In re Thayer*, 98 B.R. 748 (BK W.D.VA 1989).

Creditor further claims that the *NADA Guides* qualifies as a "market report" because it provides quotations for vehicles. Creditor also regularly relied on the *NADA Guides* in ascertaining values for vehicles in its business. Therefore, values from the *NADA Guides* are admissible as evidence for determining the replacement value of the Vehicle at issue.

Creditor requests this court to value the Vehicle at $28,400.00, as reflected in the *NADA Guides*.

Debtor's response to opposition

In response, Debtors argue that Kelly Blue Book is also a "market report." Debtors allege that they additionally submitted an Edmunds report, which values the Vehicle at $23,256. However this report is not found in the record, and Debtors fail to explain how these reports are "market reports."

Debtors also contend that Creditor fails to consider "the age and condition of the property" as required by 11 U.S.C. § 506(a). According to Debtors, based on statements of some unidentified person, it would cost a dealer at least $2,893.15 to correct the deficiencies of the Vehicle. Debtors conclude that the value of the Vehicle should be between $22,826.85 to $23,203.00, considering its age and condition.

Consideration of the Evidence

Presumably Debtors' Declaration (Dckt. 26) provides the best testimony as to the owners' value of this vehicle. To that end, the Debtors

provide the following testimony to be used by the court to value this vehicle:

A. "[Debtors] believe and assert that the reasonable value of the [Vehicle] is $23,203.00."

B. The Debtors have used the proper 11 U.S.C. § 506(a)(2) retail merchant sales price, taking into account the age and condition of the vehicle.

C. The Debtors have also considered the Kelly Blue Book Value stated for the Vehicle. Exhibit A is a copy of the Kelly Blue Book valuation which the Debtors assert in support of their valuation. Though not expressly stated, the court infers that it was the Debtors who obtained this valuation from the Kelly Blue Book website.

D. Exhibit A is a copy of what has been identified as the Kelly Blue Book on-line valuation report. kbb.com. Exhibit A lists a values ranging from $21,103.00 (fair condition), $23,203.00 (good condition), $24,003.00 (very good condition), and $24,803.00 (excellent condition).

E. The condition terms are defined by Kelly Blue Book though those definitions are not provided as part of this exhibit. (Kelly Blue Book being a market report or quotation commonly used in the auto industry for vehicle valuations, Fed. R. Evid. 803(17), and routinely presented to this court, the court is very familiar with such terms and that they have specific definitions used in stating such values.)

F. As pointed out by Creditor, the Kelly Blue Book Report provided as Exhibit A shows the values for a "Private Party Sale," not for a retail merchant sale. Such retail merchant sales price is commonly higher.

The Debtors have also provided a Carmax "Appraisal Offer" in the amount of $23,000.00. This suffers from the basic problem that it is a hearsay statement for which no grounds for admissibility has been shown. Fed. R. Evid. 801, 802, 803, 804.

Further, to the extent that the court considers this "Appraisal Offer," it demonstrates that the merchant retail sale value of this vehicle is greater than $23,000.00. Carmax is a well known used car dealership. Such purchases are commonly for the purpose of resale on the Carmax lot. That being the case, Carmax (as an auto dealer) has to be projecting the retail merchant price to be sufficiently greater than $23,000.00 to pay for the cost of marketing and sale (even if only washing the car, changing the oil, paying the used car sales employee commission, the vehicle's share of overhead, and the cost of funds) and for Carmax to make a profit. If Carmax projected selling it for only 10% more, the retail market value would be $25,300.00. Additionally, this report states that the vehicle is in "Good Condition" and has many accessories.

Only when an opposition was filed do the Debtors provide any specific information as to the condition of the vehicle. Ms. Dosty (one of the Debtors) testifies that(1) the brakes squeal, (2) rims are damaged, and (3) there are scratches on the body and bumper. Declaration, Dckt. 55. Ms. Dosty then provides the hearsay testimony as to what some unknown repair person has said it would cost to make the three repairs. After subtracting these amounts, she believes that the vehicle has a value of $22,826.85. This after the fact testimony based on statements of unidentified third-parties made outside the court is of little credibility.

Creditor has provided the court with the NADA valuation, a competing market guide or report. The NADA lists the "Clean Retail" value (after adjusting for mileage) to be $28,400.00. Creditor asserts that this is the correct retail merchant value for this Vehicle.

Both parties have provided the court with information concerning the vehicle, and both parties have withheld other information – condition of the vehicle, and credible evidence as to the costs related to the condition of this Vehicle. However, this shortcoming does not preclude the court from making a value determination.

The Debtors' evidence supports a value, as is, of at least $25,300.00 (assuming that a used car dealer would seek only a 10% increase in the sales price over what it cost to buy this Vehicle from Debtors). The Debtors have established that the vehicle is in generally good condition (as stated in the Carmax "Appraisal Offer" presented to the court.

For Creditor, the upper end of value is $28,400.00, but this is for a pristine car sitting on the used car dealer lot. Creditor has withheld from the court the "Clean Retail" definition used by the NADA. Though Creditor may assume that the court is familiar with such definitions, it is not appropriate for parties (be they the Debtors with their Kelly Blue Book Report or Creditor with the NADA Report) to task the court to do independent research and presentation of evidence.

The Debtors have provided testimony that the brakes squeal, rims need to be replaced, and this four model year old car has some scratches (which is of no great surprise for a car which has actually been used by a consumer). Though recognizing that Debtors did not provide this information until after the Opposition was filed, Creditor made no attempt to provide the court with the value of a repossessed four model year old car, but to the "Clean Retail" car sitting on the dealer lot.

From the "Clean Retail" value of $28,400.00, the court makes an adjustment of ($1,892.00) for the condition of a repossessed vehicle of this nation. The adjustments are for routine maintenance, cleaning, and preparation of a vehicle for retail merchant sale, and include: oil change, filters, engine cleaning, transmission fluid and filter replacements, interior detailing and cleaning, used condition of tires, exterior detailing, scratch covering, and a tank of gas. With these adjustments, the NADA Report value would be reduced to $26,508.00. This is consistent with the extrapolation from the "Appraisal Offer" presented by Debtors.

The court finds that the 2010 Mercedes-Benz E-350 4 door Sedan Sport which secures the claim of Mercedes-Benz Financial Services USA, LLC to have

a value of $25,750.00. The lien on the Vehicle's title secures a purchase-money loan incurred in 2011, more than 910 days prior to filing of the petition, with a balance of approximately $31,939.14. 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 $25,750.00. *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 balance of the claim shall be paid as a general unsecured claim as provided in a confirmed bankruptcy plan

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for 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 Mercedes-Benz Financial Services USA, LLC secured by an asset described as a 2010 Mercedes-Benz E-350 4 door Sedan Sport is determined to be a secured claim in the amount of $25,750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of said Vehicle is $25,750.00 and is encumbered by liens securing claims which exceed the value of the asset.

7. 13-36004-E-13 ALLEN/LORI DOSTY **MOTION TO VALUE COLLATERAL OF**
DMA-2 David M. Alden **NATIONWIDE WEST, LLC**
1-18-14 [29]

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 18, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $7,577.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2005 Chevrolet Suburban (hereinafter "Vehicle"). The Vehicle is in fair condition with approximately 145,000 miles. The Debtor seeks to value the property at a replacement value of $7,577.00 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 2012, more than 389 days prior to filing of the petition, with a balance of approximately $12,245.18. 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 $7,577.00. *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 Nationwide West LLC secured by an asset described as a 2005 Chevrolet Suburban is determined to be a secured claim in the amount of $7,577.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $7,577.00 and is encumbered by liens securing claims which exceed the value of the asset.

8. 13-36004-E-13 ALLEN/LORI DOSTY
DMA-3 David M. Alden

MOTION TO VALUE COLLATERAL OF REPUBLIC EQUITY CREDIT SERVICES, INC.
1-18-14 [34]

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 18, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral. 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 Republic Equity Credit Services, Inc. While the Debtor properly served that entity, as it appears on the Illinois Secretary of State database, it does not appear to be the proper entity that holds the claim.

On February 10, 2014, Old Republic Insurance Company filed a secured claim for $127,107.17 based on a Deed of Trust. The servicing company is listed as Old Republic Equity Credit Services, Inc. There is nothing filed with this Motion or in the file to show that the loan servicing company is the creditor (11 U.S.C. § 101(1)) in this case having a claim for the court

to value. The court will not knowingly issue an order purporting to effect rights of a person who does not have a claim or interest before the court.

As the Debtor has not named the proper entity in the motion and supporting pleadings, the court cannot grant the requested 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 is denied without prejudice.

9. 13-36004-E-13 JHW-1 — ALLEN/LORI DOSTY — David M. Alden — OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ FINANCIAL SERVICES USA, LLC — 1-14-14 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2014. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

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

matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Mercedes-Benz Financial Services USA LLC opposes confirmation of the Plan on the basis that the Debtor does not provide the proper interest rate for its claim. The plan provides for a 4.75% interest rate and Creditor seeks a 6.25% interest rate. Creditor also argues that the Debtor undervalued the collateral (which it is objection to the Motion to Value in a separate matter).

Debtor responds, stating that increasing the interest rate will require the Debtors to increase their funding of the proposed plan, which increases the risk of default. Debtor states the percentage calculated is proper.

DISCUSSION

Creditor argues that this interest rate of 4.75% is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. In contending that the proposed interest rate is too low, Creditor asserts the following in the Objection to Confirmation:

A. Schedules I and J indicate that Debtor's disposable income is $2,541.31, which limits the Debtors to a stringent budget. This puts the Debtors at a high risk rate of default.

B. The Plan term is for 60 months.

C. The 2010 model year Vehicle is a "rapidly depreciating asset."

D. The plan extends the payment period of the Debtors for an additional 27 months past the original contract date. The copy of the contract attached to the Proof of Claim provided as Exhibit B states a contract interest rate of 7.00%.

E. Therefore, the court should set the plan interest rate at 6.25%.

Objection to Confirmation, Dckt. 19.

The evidence provided to support the Objection to Confirmation begins with the declaration of Anita Walter. Declaration, Dckt. 21. Ms.

Walter provides the following personal knowledge testimony under penalty of perjury:

A. She is a bankruptcy specialist employed by Creditor.

B. Debtors entered into a contract on March 25, 2011, to purchase the 2010 Vehicle.

C. Exhibit C is a copy fo the Wall Street Journal Prime Rate for January 9, 2014, listing the then prime rate to be 3.25%, the prior month prime rate to be 3.25%, and the January 2013 prime rate to be 3.25%.

Ms. Walter does not provide any testimony as to why, how, and how much this 2010 (four model year old) Vehicle is rapidly depreciating. If this four model year old vehicle is subject to such rapid depreciation, then possibly the court should revisit its decision on valuation. A four model year old vehicle should generally have suffered its most rapid depreciation in the first three years of its existence. The court relied on that basic "fact" in determining the retail merchant value for purposes of 11 U.S.C. § 506(a). FN.1.

FN.1. The grounds for the opposition stated by Creditor in the Objection to Confirmation are subject to the provisions of Federal Rule of Bankruptcy Procedure 9011. When a party makes an affirmative statement, such as this four model year old vehicle being subject to rapid depreciation, and then providing no evidence to support the contention, the court questions whether that portion of the Objection, as well as the balance of the Objection, are made in good faith. Rather, it appears that making such an unsupported contention may merely be a litigation strategy intended to mislead the court, law clerks, and externs, hoping that in the press of judicial business the court would just take it as true.

As for interest in excess of 4.75% Creditor offers precious little for the court to use in increasing the amount. Creditor contends that the Debtors' budget (based on Schedules I and J) is so tight that it renders it highly susceptible to creating a default – thereby justifying a higher interest rate. If the court were to accept this contention as true, no amount of interest rate increase would be property, but the court would conclude that the plan is not feasible.

On Schedule I the Debtors list $7,648.22 in Combined Monthly Income. Dckt. 1 at 30. This includes a deduction of $118.00 a month for "voluntary contributions to retirement plans," $20.00 for a charitable deduction, $338.00 business automobile expense, $325.00 business food expense, and $145.00 cable expense. The business is described on Schedule I as "Management (Indep Contractor), Self-employed mgmt: room & board facility."

For Schedule J expenses the Debtors include $2,246.41 for mortgage, property taxes and insurance on their residence. Dckt. 1 at 32. There is an additional $320.00 for transportation; $300.00 for food, $221.00 for telephone cell phone, satellite, and cable; $235.00 for charitable donations, $285.00 for life insurance; and $400.00 for estimated federal and state taxes. While this budget is "snug," there are areas of discretionary

spending which can be adjusted to provide for making the plan payment if other areas increase.

Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.5% risk adjustment, for a 4.75% interest rate. This is the rate that was provided for in the plan by the Debtors. Therefore, the objection to confirmation of the Plan on this basis is therefore overruled. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

The Objection on this ground is overruled.

Failure to Provide For Payment of Secured Claim

The proposed Chapter 13 Plan provides for payment of a $23,203.00 secured claim for Creditor. However, the court has determined pursuant to Debtors' Motion to Value that Creditor's secured claim is in the amount of $25,750.00.

Therefore, the objection by Creditor based on this ground is sustained, the Debtor only providing for only a $23,203.00 secured claim.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and the plan is not confirmed.

10. 13-36004-E-13 ALLEN/LORI DOSTY **OBJECTION TO CONFIRMATION OF**
NLE-1 David M. Alden **PLAN BY DAVID CUSICK**
1-29-14 [41]

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 29, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on pending Motions to Value Collateral. The court has denied a Motion to Value a claim of Republic Equity Credit Services, that entity appearing to be merely a servicing company and not the creditor who filed a claim in this case. Proof of Claim No. 6.

Additionally, the court has determined that the secured claim of Mercedes Benz Financial Services, LLC is in the amount of $25,750.00. The Chapter 13 Plan provides for payment of only a $23,203.00 secured claim for this creditor.

The Objection to Confirmation is sustained.

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

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

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

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

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

11. 13-35107-E-13 PLL-2 FERNANDO RODRIGUEZ Peter Lago

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 1-22-14 [38]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to 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, N.A. However, the fails to state with particularity the grounds, Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based. The Motion, Dckt. 38, states with particularity the following grounds:

A. Debtor, pursuant to, 11 U.S.C. § 506(a) and (d), Federal Bankruptcy Procedure 3012; General Order O5-03, as amended by General Order No. 06-01, 3(b), *Zimmer vs. PSB Lending Corp. (In re Zimmer)*, 313 B.R. 1220 (9th Cir. 2002) and *Lam vs. Investors Thrift (In re Lam)*, 221 B.R. 36, 40-41 (B.A.P 9th Cir 1997);

B. Will and does move the court for an order,

1. Valuing the [unidentified] property as set forth in Debtor's,

2. Determining the [unidentified] creditor's claim to be wholly unsecured,

3. Avoid the lien of such creditor and

4. Treating such creditor's claim as unsecured under the Chapter 13 Plan; and

C. The Motion is based on the declarations filed in support of the Motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

No Legal Basis For Relief Requested

No points and authorities has been offered by Debtor. Quite possibly, and properly, for a simple motion to value a secured claim pursuant to 11 U.S.C. § 506(a) no points and authorities is required. However, the relief goes beyond merely having the claim valued for purposes of a Chapter 13 Plan. Rather, the Motion requests that the court avoid the lien. The court cannot divine any basis for avoiding the lien pursuant to a motion to value. The court has addressed in length the legal concepts of "lien stripping" and the necessity for a debtor to complete a plan before having the right to have a deed of trust or mortgage conveyed. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case); and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013). If the grounds for the relief requested, factual and legal, had been stated in the Motion, possibly the Debtor may not have requested that the deed of trust be avoided, or could have educated the court as to what basis exists for immediately avoiding such lien.

Declaration by Counsel for Debtor

A declaration has been filed in support of the Motion. Declaration, Dckt. 40. In it the Debtor testifies to various facts to which he may very likely have personal knowledge. However, the Declaration is also made by Debtor's Counsel, stating that such Counsel has made himself a witness in this case. Counsel also purports to testify under penalty of perjury as to having personal knowledge of (1) that he is the Debtor in this case, (2) when he, the Counsel, commenced this case he was and still is the owner of the property securing a claim, (3) he has an opinion as to the value of the property securing the claim, (4) he has knowledge as to the amount owed on the two claims secured by the property, and (5) that in coming to his opinion as to value he has relied upon his familiarity with values of other residences in his neighborhood. No basis has been shown for Counsel to have any such personal knowledge. Fed. R. Evid. 601, 602. No basis is shown for counsel being an expert witness competent to testify as to the value of the real property. Fed. R. Evid. 701, 702.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

12. 13-33208-E-13 TERA KRIDER **CONTINUED MOTION TO CONFIRM PLAN**
OAG-2 Ognian A. Gavrilov **11-24-13 [29]**

CONT. FROM 1-14-14

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2013. By the court's calculation, 51 days' notice was provided. 42 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Chapter 13 Plan. No appearance at the February 25, 2014 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the plan on the basis that Debtor has not filed her 2010 Federal Tax Return.

The Trustee also notes that the Internal Revenue Service filed a secured claim on December 4, 2013, Claim No. 6, in the amount of $13,285.00 with the tax ID number ending in 4046. Trustee states this does not appear to be Debtor's social security number. Trustee states that based on a letter provided by the Debtor, it appears portions of the IRS claim may not be accurate. Trustee requests clarification as to the claim filed by the IRS and the letter filed by Debtors.

Opposition

Debtors respond stating that Debtor did not earn any income in the 2010 tax period, as she was in school taking pre-nursing courses. Debtor states she only received spousal support during the 2010 tax year but it was such a low amount that she was not required to file.

Debtor also states that while the IRS has filed a claim in this case, the social security number listed is not the Debtors but is her ex-husband's. Debtor states she will be filing an objection to the claim due to the mistake. Debtor also received a letter from the IRS which states Debtor is not liable for the balance due because she and her ex-husband did not file joint tax returns for the 2005, 2006 ro 2007 tax years, which are the years owing in the claim.

CONTINUANCE

Based on a review of the file, the Debtor filed a Objection to Proof of Claim on January 6, 2014. Based on the foregoing, the court continued the hearing on the Motion to Confirm to be heard with the pending Objection to Proof of Claim.

The court overruled the Objection to Proof of Claim, the Internal Revenue service having withdrawn its proof of claim on January 17, 2014. Dckt. 48.

On January 30, 2014, the Trustee withdrew its objection to the Debtor's Motion to Confirm.

Based on the foregoing, the court grants the Motion to Confirm.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. 13-33208-E-13 TERA KRIDER **OBJECTION TO CLAIM OF INTERNAL**
OAG-3 Ognian A. Gavrilov **REVENUE SERVICE, CLAIM NUMBER 6**
1-6-14 [42]

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

Correct Notice Not 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 6, 2014. By the court's calculation, 50 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 6 of the Internal Revenue Service is overruled as moot. No appearance at the February 25, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 6 on the court's official claims registry, asserts $13,285.00 tax priority secured claim and $98,027.03 of unsecured claims. The Debtor objects to the Proof of Claim on the basis that Debtor never incurred debt with the creditor and that the Social Security Number listed on the claim is not the Debtor's social security number. The social security number listed is that of the Debtor's ex-husband. Debtor states that a letter was sent from the IRS stating that her name would be removed from the account and that she would not be responsible for the balance due.

However, Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

> **(a) Listing the United States as a Creditor; Notice to the United States.** When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency

through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
Insolvency Group 1
4330 Watt M/S SA 5210
Sacramento, CA 95821

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

However, it appears that on January 17, 2014, the IRS submitted a letter to the Clerk of the Court stating that Debtor is not liable for the

amount shown on their proof of claim and that the claim is no longer in force and effect. Dckt. 48.

Based on the evidence before the court, the Objection to the Proof of Claim is overruled as moot, the Creditor having withdrawn its proof of claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 6 of Internal Revenue Service is overruled as moot, Internal Revenue Service having filed a withdrawal of Proof of Claim No. 6, Dckt. 48.

14. 14-20909-E-13 MOH-1 | **BERENYZE MENDOZA AND SERGIO VALDOVINOS** Michael O'Dowd Hays | **MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, NA** 2-11-14 [18]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor 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.

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.

The court's tentative decision is to continue the hearing on the Motion to Value Collateral to March 4, 2014. No appearance at the February 25, 2014 hearing is required.

Debtor seeks to value the collateral of Bank of America, N.A. However, the motion was not served by certified mail to Bank of America, N.A. as required by Federal Rule of Bankruptcy Procedure 7004(h).

The court notes the Debtor filed a Notice of Continued Hearing on the Motion to Value, which was served properly. The service being proper on the Notice of Continued Hearing, and the Debtor having acted proactively to correct the Federal Rule of Bankruptcy Procedure 7004(h) and 9014 service issue, the court will allow the hearing to be continued.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on March 4, 2014.

15. 10-29312-E-13 CJO-1 — LESLIE/ANNA RHINEHART — Peter G. Macaluso — MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT — 2-7-14 [50]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee on February 7, 2014. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification with the Debtors.

On February 20, 2014, JPMorgan Chase Bank, N.A. filed an amended motion (Dckt. 55) seeking the same relief as requested in the original motion filed on February 7, 2014 (Dckt. 50). It appears that the amended motion was filed to provide the court with the specific grounds upon which the relief was requested and the relief itself (the terms of the modification) as required by Federal Rule of Bankruptcy Procedure 4001(c) and 9014. The Motion states that the modification will reduce the Debtor's monthly mortgage payment to $877.64. The modification will capitalize the pre-petition arrears and provides for an interest rate of 2.0% over the next 303 months.

However, the actual Loan Modification Agreement provides for the 2% interest rate and payments of $877.64 a month for the first five years. After that, the principal and interest payment steps up to $823.30 for year six, $896.98 for year seven, and $933.46 for years eight through twenty-five. The interest steps up to 4.5% for years eight through twenty-five. For years six through twenty-five the monthly escrow is subject to adjustment.

The Loan Modification Agreement is signed by the Debtors and there is nothing to indicate that the summary in the Motion not addressing the interest rate change is anything more than an oversight. The terms as set forth in the Agreement do not appear inconsistent with the terms as generally state, and the ultimate step-up to 4.5% interest for years six through twenty-five does not shock the conscious of the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Creditor JPMorgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Leslie and Anna Rhinehart, Debtors, are authorized to amend the terms of their loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 6692 75th Street, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 58, in support of the Motion.

16. 13-35413-E-13 ROBERT JEFFREY
APN-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
1-22-14 [26]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection is overruled as moot and confirmation is denied. No appearance at the February 25, 2014 hearing is required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on February 20, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

17. 13-35413-E-13 ROBERT JEFFREY
TSB-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
1-23-14 [30]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 23, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection is overruled as moot and confirmation is denied. No appearance at the February 25, 2014 hearing is required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on February 20, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

18. 13-33914-E-13 LAURA BRENNAN
DEF-4 David Foyil

CONTINUED MOTION TO CONFIRM PLAN
12-3-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Chapter 13 Plan. No appearance at the February 25, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation on the basis that the plan relies on two pending motions to Avoid Liens, set to be heard the same day as this confirmation hearing. The court having denied and continued the respective Motions to Avoid Liens, the Trustee's objection was of merit.

The Trustee also objected to the last sentence in paragraph 6.02 of the proposed plan that "The remaining unpaid non-dischargeable balance, shall not be paid by the Debtor until after completion of this plan (upon entry of final decree). Said claims shall not accrue interest during the pendency of this plan." Trustee states that this sentence appears unnecessary and may not be correct as to the accrual of interest during the plan.

Debtors respond, consenting to an order modifying the terms of the proposed plan such that the additional provisions set forth in the plan under Section 6.02 of the plan shall become deleted.

The Debtors re-filed the Motions to Avoid Liens and set them for hearing for February 25, 2014. The court continued the hearing on confirmation to be heard in conjunction with those motions.

The court having granted the Motions to Avoid Liens, the motion is granted 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 Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 3, 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.

19. 13-33914-E-13 DEF-5 LAURA BRENNAN David Foyil — MOTION TO AVOID LIEN OF THE FEED BARN COUNTRY STORE 1-17-14 [56]

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 17, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid a Judicial Lien is granted. No appearance at the February 25, 2014 hearing is required.

A judgment was entered against the Debtor in favor of The Feed Barn Country Store for the sum of $3,391.71. The abstract of judgment was recorded with Amador County on February 5, 2013. That lien attached to the Debtor's residential real property commonly known as 13327 Taves Road, Jackson, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $220,000.00 as of the date of the petition. The unavoidable consensual liens total $211,528.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $8,500.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of The Feed Barn Country Store, Amador County Superior Court Case No. 11-CR-18269, recorded on February 5, 2013, Document No. 2013-0001116-00, with the Amador County Recorder, against the real property commonly known as 13327 Taves Road, Jackson, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20. 13-33914-E-13 LAURA BRENNAN
DEF-6 David Foyil

MOTION TO AVOID LIEN OF MICHAEL J. MARTIN
1-17-14 [62]

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 17, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid a Judicial Lien is granted. No appearance at the February 25, 2014 hearing is required.

A judgment was entered against the Debtor in favor of Michael J. Martin dba Martin Horse and Board Care for the sum of $7,436.00. The abstract of judgment was recorded with Amador County on November 20, 2012. That lien attached to the Debtor's residential real property commonly known as 13327 Taves Road, Jackson, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $220,000.00 as of the date of the petition. The unavoidable consensual liens total $211,528.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $8,500.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Michael J. Martin dba Martin Horse and Board Care, Amador County Superior Court Case No. 11-CR-18269, recorded on November 20, 2012, Document No. 2012-0010480-00, with the Amador County Recorder, against the real property commonly known as 13327 Taves Road, Jackson, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

21. 13-30915-E-13 PETER/THERESA SMITH
NLG-1 Timothy J. Walsh

MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
1-23-14 [36]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 23, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Residential Credit Solutions, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment on the real property commonly known as 1100 Pintail Drive, Suisun City, California from the current

$1,866.69 to $1,641.15. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.950% over the next 22 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter and Theresa Smith are authorized to amend the terms of their loan with Residential Credit Solutions, Inc., which is secured by the real property commonly known as 1100 Pintail Drive, Suisun City, California, and such other terms as stated in the Modification Agreement filed as Exhibit "4," Docket Entry No. 39, in support of the Motion.

22. 13-31916-E-13 DLM-6 — DALE/LEILANI MILLER, Pro Se — MOTION TO CONFIRM PLAN 1-14-14 [81]

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 14, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 14, 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.

23. 13-35016-E-13 NAMATH KANDAHARI
MRG-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
1-15-14 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 15, 2014. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

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

The Bank of New York Mellon fka The Bank of New York Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates, Series 2006-AR3 ("Creditor") opposes confirmation of the Plan on the basis that the plan does not provide for the curing of the default and maintenance payments on its claim.

The creditor has filed a timely proof of claim in which it asserts $30,063.56 in pre-petition arrears. The Plan does not propose to cure these arrears. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrears, the plan cannot be confirmed.

Debtor responds, agreeing that the plan cannot be confirmed given the state of affairs as presenting in the petition and 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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

24. 13-35016-E-13 NAMATH KANDAHARI — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
TSB-1 Timothy J. Walsh — 1-23-14 [32]

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.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. § 343.

The Trustee also argues that the plan relies on a pending motion to Value Collateral of Bank of America, which was set for hearing February 11, 2014. The court having granted the Motion to Value, this portion of the objection is overruled.

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

Lastly, the Trustee argues that the Debtor cannot make the payments, as he is proposing plan payments of $1,000.00 for 60 months, but the monthly net income listed in Schedule J is negative $2,175.84.

Debtor responds, agreeing that the plan cannot be confirmed given the state of affairs as presenting in the petition and 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.

25. 13-34917-E-13 AARON CATUBIG **MOTION TO CONFIRM PLAN**
SJS-1 Scott J. Sagaria **1-3-14 [15]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2014. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes confirmation offering evidence that the Debtor is $175.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also argues that the Debtor's plan may not be the Debtor's best efforts under 11 U.S.C. § 1325(b), believing that the Debtor is understating his projected bonus. Debtor is below median income, proposing a 60 month plan paying $575.00 per month with a dividend of 0% to unsecured claims. Trustee states that on Debtor's amended Schedule I, he adds $412.50 per month derived from an annual bonus he receives. Debtor indicates in his declaration (Court docket #18, page 3 #15) that he receives an annual bonus of between 8% and 11% of his annual income. Debtor further declares that he used a 9% average of his income to determine the bonus income reported on Schedule I. $412.50 over 12 months totals $4,950.00 per year. In 2013, the Debtor received $9,072 bonus which works out to approximately $756 per month over a 12 month period ($9,072/12). In support of the motion, Debtor filed copies of paystubs showing the annual bonus income itemized as "incentive pay" (See paystubs, Court docket #19, pages 13-14). The Trustee is not opposed to the Debtor resolving this portion of the objection by proposing to pay in the net amount of his yearly bonus upon receipt in the order confirming.

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.

**26. 10-50418-E-13 SDB-2 | GEORGIA SCHMIDT
W. Scott de Bie | MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
1-21-14 [69]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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.

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 3625 Fernwood Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of $161,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $301,653.00. Creditor JPMorgan Chase Bank N.A.'s second deed

of trust secures a loan with a balance of approximately $80,823.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3625 Fernwood Street, 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 $161,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

27. 10-51318-E-13 PGM-4 | **GINA NELSON AND CLINT BRADFORD** | **MOTION TO MODIFY PLAN 1-10-14 [102]**
Peter G. Macaluso

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

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 10, 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.

28. 13-35420-E-13 LATASHIA RICHARDSON
TSB-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
1-23-14 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 23, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

Additionally, Trustee states that Debtor admitted at the Meeting of Creditors that she had not filed all of her tax returns during the 4-year tax period preceding the filing of the Petition. Filing of the return is required. 11 U.S.C. § 1308.

The Trustee also states that the plan fails the Chapter 7 liquidation test, as Debtor admitted at the First Meeting of Creditors that she owned a 2006 Volkswagen Passat free and clear that is not listed on Schedule B or exempted on Schedule C.

Lastly, the Trustee states that the Debtor admitted at the First Meeting of Creditors that she no longer owns the 2002 Mercedes listed in Class 2 of the plan. Debtor stated she purchased the Mercedes in November

2013, the Dealership repossessed the car and offered her a 2006 Volkswagen Passat free and clear.

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.

29. 13-30721-E-13 TJW-2 | MICHAEL/LYNETTE ALLEN, Timothy J. Walsh | MOTION TO VALUE COLLATERAL OF RBS CITIZENS, N.A. 1-9-14 [36]

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 9, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance at the February 25, 2014 hearing is required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 498 Emerald

Hills Cir., Fairfild, California. The Debtor seeks to value the property at a fair market value of $375,000.00 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 $551,894.00. Creditor RBS Citizen N.A.'s second deed of trust secures a loan with a balance of approximately $62,276.00. 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 RBS Citizen's N.A. secured by a second deed of trust recorded against the real property commonly known as 498 Emerald Hills Cir., Fairfiled, 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 $375,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

30. 11-21422-E-13 PGM-5 | **SHMAVON MNATSAKANYAN AND YERMONIYA ARTUSHYAN**
Peter G. Macaluso | **CONTINUED MOTION TO APPROVE LOAN MODIFICATION**
12-3-13 [113]

CONT. FROM 2-11-14, 1-14-14

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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to continue the hearing on the Motion to Approve Loan Modification to March 25, 2014 at 3:00 p.m. No appearance at the , 2014 hearing is required.

PRIOR HEARING

Green Tree Servicing, LLC, files the present Motion, stating that the plan provides for its claim in Class 4. (As discussed below, the Claim identified in the Plan and the Proof of Claim filed is for Bank of American, N.A., not Green Tree Servicing, LLC.) Green Tree Servicing, LLC has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $400.70. A review of the Loan Modification (attached as Exhibit A) shows that Green Tree Servicing, LLC is named as the "Lender" on the loan to be modified. The confirmed plan lists Bank of America as the only creditor with a secured claim on the residence. Proof of Claim No. 17, filed by BAC Home Loans Servicing, LP. A Substitute of Trustee and Assignment of Deed of Trust filed with Proof of Claim No. 17, shows BAC Home Loans Servicing, LP was transferred the interest in the deed of trust on August 13, 2010. FN.1 No assignment or transfer of claim appears on the docket transferring any interest to Green Tree Servicing, LLC.

FN.1. In connection with other proceedings, the court has been provided with a Certificate of Merger filed with the Texas Secretary of State stating that BAC Home Loans Servicing, LP was merged into Bank of America, National Association. This Certificate is dated June 28, 2011, and is stated to be effective July 1, 2011. The California Secretary of State reports that BAC Home Loans Servicing, LP registration with California was cancelled. See, http://kepler.sos.ca.gov/cbs.aspx.

The court is not certain how Green Tree Servicing, LLC, can name itself as "Lender" in a Loan Modification for an obligation that appears to be owed to Bank of America, N.A. The court will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Bank of America, N.A., successor in interest to BAC Home Loans Servicing, LP.

The court issued an order to Debtors and Green Tree Servicing, LLC to file on or before January 21, 2014, any and all properly authenticated documents identifying that Green Tree Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). The court continues the hearing to January 28, 2014, to allow the parties to file the appropriate documentation. FN.2.

FN.2. This court has previously addressed with Green Tree Servicing, LLC the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause and Green Tree Servicing, LLC has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

The court acknowledges that Green Tree Servicing, LLC has, and most likely will, in connection with this matter be responsive and address the court's concerns – as well as educating the court to the current practical business issues, and challenges, of maintaining a nationwide business providing these types of services. However, it appears that the impact of these changes is limited or fleeting.

Further, if Green Tree Servicing, LLC has expanded its business to purchase notes, how it will provide that information to the federal courts.

GREEN TREE SERVICING LLC'S RESPONSE

Green Tree Servicing, LLC responds stating that it is the servicer of the loan, with Fannie Mae being the owner of loan. Green Tree Servicing, LLC confirms that it is not the creditor in this case. *See* 11 U.S.C. § 101(10) for definition of creditor.

Green Tree Servicing, LLC states that it was granted the authority to enter into the loan modification agreement pursuant to a duly noticed power of attorney from Bank of America, N.A. (the prior loan servicer), which is attached as Exhibit A. Green Tree Servicing, LLC states this document grants Green Tree Servicing, LLC the right to execute loan modifications that were initiated when Bank of America, N.A. was servicing the loan. Green Tree Servicing, LLC states that the Power of Attorney provides that it may execute the loan modification agreement in the stead of Bank of America, N.A. and in its own name, which would bind Fannie Mae.

At this point, the court needs to carefully review with Green Tree Servicing, LLC what it is asserting, the legal basis for it, and how Green Tree Servicing, LLC is asserting such rights (and quite possibly misleading the consumer debtors). Breaking down the arguments and legal authorities into outline form is of assistance to the court, rather than a long narrative.

I. **Supplemental Brief.** As the basis for Green Tree Loan Servicing, LLC, individually in its name, to enter into a contract with a consumer to modify the contract of the third-party creditor, the court has been presented with the following arguments:

A. Green Tree Loan Servicing, LLC is only the loan servicer.

B. Fannie Mae is the actual creditor and Green Tree Servicing, LLC is the current servicer of that loan (having purchased the servicing rights from Bank of America, N.A.).

C. Legal Points and Authorities

1. Green Tree Servicing, LLC does not deny that it is only the servicer of the loan being modified which it the claim in this case.

2. The Power of Attorney provides that "Green Tree [Servicing, LLC] may execute the loan modification agreement in the stead of [Bank of America, N.A.]

3. *Roth v. Schaaf*, 148 Cal. App. 2d 662, 666 (1957), holds that "the purpose and effect of a power of attorney of this kind [the points and authorities do not indicate what "kind" of power of attorney is referenced in the District Court of Appeal ruling] are to vest in the attorney full authority to transact any and all kinds of business for the principal."

4. Green Tree Servicing, LLC has never asserted that it is a creditor in this case, as that term is defined by 11 U.S.C. § 101(10). Green Tree Servicing, LLC has no documents or basis for asserting that it is a creditor in this bankruptcy case.

5. The Loan Modification Agreement makes no representation that is it the owner of the Note or creditor in this case. Though it creates a defined term by which Green Tree Servicing, LLC is identified as "Lender," this choice of definition is not a "representation" of Green Tree Servicing, LLC (to the least sophisticated consumer, the court borrowing that debt collection concept from the Federal Fair Debt Collection Practices Act, or the least sophisticated consumer's bankruptcy counsel).

6. Green Tree Servicing, LLC is the attorney in fact for Fannie Mae.

7. The court should accept Green Tree Servicing, LLC as the party authorized and entitled to execute this Loan Modification with the Debtor so that "Debtors may retain their home and unnecessary litigation may be avoided."

II. Documentary Evidence. As the sole document upon which Green Tree Servicing, LLC bases its authority to act in its name to enter into the loan modification with the Debtor, it has provided the court with a Limited Power of Attorney executed by Bank of America, N.A. The Power of Attorney is provided as Exhibit. A. The Power of Attorney states:

1. The Power of Attorney is granted by Bank of America, N.A., as successor to BAC Home Loans Servicing.

2. Bank of America, N.A. appoints Green Tree Servicing, LLC as the Attorney in Fact for Bank of America, N.A.

3. Green Tree Servicing, LLC is given "full power and authority to act **in the name of** and **on behalf of** [**Bank of America, N.A.**] solely to do the following:" [emphasis added],

   a. For all **loan modifications in process** at the **time servicing** of loans **is transferred** to Green Tree Servicing, LLC.

   b. For judicial foreclosures, Green Tree Servicing, LLC is authorized to bid in the **name of Bank of America, N.A.**, but authorization is

excluded if any additional documents are required for the entry of a judgment for foreclosure.

4. The Power of Attorney is given by Bank of America, N.A. to Green Tree Servicing, LLC solely for the servicing rights which were sold to Green Tree Servicing, LLC.

5. The Power of Attorney remains in full force and effect until revoked by Bank of America, N.A. or termination of Bank of America, N.A.'s participation in the HAMP or 2MP Programs.

Exhibit A, Dckt. 125.

III. Testimony Presented by Green Tree Servicing, LLC. Wanda Lamb-Lindow provides her declaration in response to the court's order. Dckt. 124. In this declaration Lamb-Lindow testifies under penalty of perjury to the following:

A. She is an Assistant Vice-President for Green Tree Servicing, LLC.

B. She is a custodian of records for Green Tree Servicing, LLC and has personal knowledge of the documents which are being presented to the court. Further, except as expressly stated in the Declaration, her testimony is based on her personal knowledge or her personal review of the books and records of Green Tree Servicing, LLC.

C. Green Tree Servicing, LLC is currently the loan servicer for the loan which is secured by (the Debtor's) property commonly known as 3417 Portsmouth Drive, Rancho Cordova, California.

D. The current owner of the loan (upon which the claim in this case is based) is Fannie Mae (which the court interprets to mean the Federal National Mortgage Association).

E. This loan was previously serviced by Bank of America, N.A.

F. On January 31, 2013, Green Tree Servicing, LLC **purchased the servicing rights** from Bank of America, N.A., and on May 31, 2013 the transfer of the servicing rights was effectuated.

G. Exhibit A is a true and accurate copy of the Limited Power of Attorney issued by Bank of America, N.A. in connection with the transfer of the servicing rights.

The court accepts Ms. Lamb-Lindow's testimony as to the transferring of the servicing rights and that the Limited Power of Attorney is the only document upon which Green Tree Servicing, LLC purports to have the right to enter into the loan modification with the Debtor in this case.

DISCUSSION

The court begins it review with the evidence which has been presented. Green Tree Servicing, LLC does not have any interest in the note, no interest (other than acting as a loan servicer) in the claim, and is not a creditor, as that term is defined in 11 U.S.C. § 101(10). The only power of attorney provided is that from Bank of America, N.A., the prior loan servicer on the note. It carefully states that Green Tree Servicing, LLC may act in the **name of and on behalf of Bank of America, N.A.** within the circumscribed scope specified in the Limited Power of Attorney.

Green Tree Servicing, LLC provides little authority for how it interprets the Limited Power of Attorney as the basis for entering into Loan Modifications, in its own name, with consumers. Therefore, the court provides the following applicable statements of law.

I. California law concerning principals and agents is found in the Civil Code. A summary of the California Civil Code provides the following.

A. An agent represents another person, the principal, in dealing with third parties. Cal. Civ. Code § 2295.

B. A person having the capacity to contract may appoint an agent. Cal. Civ. Code § 2296.

C. An agent for a particular act is a "special agent," with all other agents being "general agents. Cal. Civ. Code § 2297.

D. An agent may be authorized to do any acts which the principal may do, except those which the principal is bound to give its personal attention. Cal. Civ. Code § 2304.

E. An agent has the authority which the principal, actually or ostensibly, confers on the agent. Cal. Civ. Code § 2315.

F. The specific grant of authority controls over the general. Cal. Civ. Code § 2321.

G. Authority expressed in general terms does not allow the agent to act in its own name, unless it is the usual court of business to so do. Cal. Civ. Code § 2322. FN.3.

FN.3. In *Bank of America National Trust and Savings Association v. Cryer*, 6 Cal. 2d 485, 488 (1936), the California Supreme Court held that when a contract is executed by an agent in the agent's name, the principal may be held liable if the principal has been disclosed.

H. Powers of Attorney are governed by California Probate Code § 2400. Cal. Civ. Code § 2400.

I. An agent may delegate its powers to another person if,

1. The act done is purely mechanical;

2. When it is such that the agent cannot perform the act;
3. When it is the usage of the place to delegate such powers; or
4. Where such delegation is specifically authorized by the principal.

Cal. Civ. Code § 2349.

II. 3 WITKIN SUMMARY OF CALIFORNIA LAW, AGENCY, CHAPTER IV, discusses powers of attorney provides that except where California Power of Attorney law (Cal. Prob. Code §§ 4000 et seq.) provides a specific rule, California General Agency Law applies (including Cal. Civ. Code §§ 2295 et seq.). *Id.* § 207(4).

III. A survey of WITKIN SUMMARY OF CALIFORNIA LAW, WILLS AND PROBATE, POWER OF ATTORNEY, CHAPTER XXI, reveals the following.

A. A power of attorney is a written instrument giving authority to an agent. *Id.* § 835.

B. Powers of attorney are strictly construed, with the specific controlling over the general. Citation to California Civil Code § 2321, *Quay v. Presidio & Ferries R. Co*, 81 C. 1 (1889); *White v. Moriarty*, 15 Cal. App. 4th 1290 (1993) (principal ratifies acts taken by agent which are within the scope of the power of attorney). *Id.* § 836.

C. California law governing powers of attorney is set forth in California Probate Code §§ 4000 et. seq. *Id.* § 839.

D. A principal is a "natural person" as defined by California Probate Code § 4026.

ANALYSIS

In trying to sort through what has been presented by Green Tree Servicing, LLC, it appears that what has occurred is that Bank of America, N.A. has engaged the services of a sub-agent to exercise some powers which Bank of America, N.A. has been granted by Fannie Mae. The court has no information as what power, if any, have been granted by Fannie Mae to Bank of America, N.A. FN.4.

FN.4. At this juncture Green Tree Servicing, LLC and its attorneys may be thinking, "really judge, do you think that a mortgage debt buyer, bank, and loan servicer would do anything other than what was proper." One only has to look to the home mortgage meltdown after 2007 in which mortgage brokers generated liar loans, mortgage debt buyers purchased debt without regard to loan documentation, real property title place holders (with no interest in or right to exercise any ownership rights in the note) purported to be owners of the notes, and banks engaged the services of robo-signers to process foreclosures and provide false declarations to understand why being truthful and accurate is necessary not only in the federal courts, but as part of ordinary commercially reasonable practices.

Taken on its face, the clear, plain language states that Green Tree Servicing, LLC may, under the Limited Power of Attorney, act in the **name of Bank of America, N.A.** for the carefully circumscribed circumstances set forth in the Limited Power of Attorney. Green Tree Servicing, LLC has not acted in the name of Bank of America, N.A., but purports to act in its own name. The court does not find credible Green Tree Servicing, LLC's argument that its internal shorthand by naming itself lender is proper and somehow results in the words "Green Tree Servicing, LLC" to mean Fannie Mae.

The court also does not know what powers have been given to Bank of America, N.A. by Fannie Mae which Green Tree Servicing, LLC may exercise in the name of Bank of America, N.A. It may well be that Bank of America, N.A. may only exercise these powers if they receive a loan by loan approval. It may be that Bank of America, N.A. is authorized to exercise powers in the name of Fannie Mae. Because Green Tree Servicing, LLC has withheld the document showing what authority Bank of America, N.A. has to act as the agent of Fannie Mae (assuming, *arguendo*, that it has been granted some authority beyond that of merely a collection agency to receive payments) the court has no idea of whether Green Tree Servicing, LLC may, in the name of Bank of America, N.A., execute the Loan Modification Agreement, or whether it has to do so in the name of Bank of America, N.A. doing it in the name of Fannie Mae.

Given the express language of the Limited Power of Attorney, no authority has been given Green Tree Servicing, LLC to contract with borrowers like the Debtor in its own name to modify the loans (contracts) the borrowers have with Fannie Mae. The express language of the Limited Power of Attorney states, "Nothing in these presents shall be deemed to empower the Attorneys in Fact [Green Tree Servicing, LLC] to perform any act outside of the scope of the authority granted herein or which is unlawful."

The court also sees no bona fide, good faith commercial reason for Green Tree Servicing, LLC purporting to execute the Loan Modification Agreement in its own name and hide the existence of the purported sub-agency upon which it asserts the right to execute this Loan Modification which alter the rights of Fannie Mae.

In the discussion of parties in CALIFORNIA JURISPRUDENCE, THIRD EDITION, IDENTIFICATION OF PARTIES, § 242, the following is what should be obvious statement,

> § 242 Identification of parties
>
> Although parol evidence may, under certain circumstances, be admissible to identify the parties to an agreement, **when parties put a contract in writing there is no more reason or excuse for omitting the name of a known party than there is for omitting its most important stipulation.** If such a name is omitted, sound policy requires the enforcement of the general rule that a writing cannot be varied by parol, and the name cannot be shown by extrinsic evidence. However, when the contract declares that it is between two particular parties, a parol explanation of the fact that a third party

signed it as agent and not as a real party in interest is proper.

Little excuse exists to put consumers or commercial parties to the burden of having after the fact determine whether Green Tree Servicing, LLC was acting in an undisclosed (as set forth within the for corners of the written contract) agency capacity, reconstruct the basis for the agency, figure out who the sub-principal and principal were, determine whether the undisclosed agency was authorized, and then decide if they actually have an enforceable contract.

The court is also uncertain if the Limited Power of Attorney authorizes Green Tree Servicing, LLC to execute the Loan Modification in the name of Bank of America, N.A. The Limited Power of Attorney only applies to "mortgage modifications in process at the time services of the related mortgage loans are transferred from [Bank of America, N.A.] to [Green Tree Servicing, LLC]..." Limited Power of Attorney, ¶ 1), Exhibit A, Dckt. 125.

Ms. Lamb-Lindow testifies that on January 31, 2013, Green Tree Servicing, LLC purchased the servicing rights from Bank of America, N.A. It may be that the purchase date is the date mortgages subject to the Limited Power of Attorney being "modifications in process" is determined. Alternatively, Ms. Lamb-Lindow testifies that on May 31, 2013, "the transfer of the servicing was effectuated from [Bank of America, N.A.] to [Green Tree Servicing, LLC]." Possibly this the outside date by which all of the loans for which "mortgage modifications [were] in process at the time services of the mortgage loans [were] transferred...to [Green Tree Servicing, LLC]."

The Loan Modification presented to the court is dated November 2, 2013. That is five months after the latest date for transfer, May 31, 2013, and nine months from the date on which Green Tree Servicing, LLC purchased the servicing rights. Quite possibly the "mortgage modification" process began after one or both of these dates.

It is also unclear whether Bank of America, N.A. has merely delegated its existing authority to act for a principal, or whether Bank of America, N.A. has unilaterally terminated the principal-agent relationship and is attempting to force a replacement agent on the principal by "selling" the servicing rights. It is clear that an agent negotiating and entering into Loan Modification in the name of the principal is not a "purely mechanical act," nor has there been a showing that Bank of America, N.A. cannot fulfill whatever undisclosed authority it has from Fannie Mae it purports to delegate to Green Tree Servicing, LLC. Cal. Civ. Code 2349(1), (2). There has been no evidence that Fannie Mae has authorized Bank of America, N.A. to delegate whatever unidentified authority has been given to Green Tree Servicing, LLC. Cal. Civ. Code § 2349(4).

No evidence has been presented to the court that the delegation of authority to negotiate home mortgage modifications is a practice in "common usage" in California, the Western United States, or the United States. Rather, given the problems which have come from the mortgage melt down, the financial institution failures, the required TARP bailouts, and the robo-signing perjury, it appears that the routine transfer of such authorizations to whatever sub-agent the agent may want (and for whatever profit the agent

can make by selling the rights), without the authorization of the owner of the loan secured by a residence is not “in the norm.”

Words are a lawyer’s stock in trade, they have a meaning, and the choice of words in contracts and pleadings have significance. Green Tree Servicing, LLC appears to be presenting a cavalier attitude over entering into Loan Modify Agreements in its own name, and hiding its agency capacity. Green Tree Servicing, LLC also appears to take lightly omitting the identity of the actual creditor whose rights are purportedly be modified. Further, Green Tree Services, LLC places little significance in stating that it is the “Lender” who is now contracting with the “Borrower” Debtor.

The Merriam-Webster Dictionary defines the verb “lend” to be,

> : to give (something) to (someone) to be used for a period of time and then returned
>
> : to give (money) to someone who agrees to pay it back in the future
>
> : to make (something) available to (someone or something)

THE MERRIAM-WEBSTER DICTIONARY AND THESAURUS available at http://www.merriam-webster.com. It continues to define the transitive verb “lending” as,

> 1a (1) : to give for temporary use on condition that the same or its equivalent be returned <lend me your pen> (2) : to put at another's temporary disposal <lent us their services>
>
> b : to let out (money) for temporary use on condition of repayment with interest

Id. The word “lender” is a noun, identifying the person who engaged in the act of lending. *Id.* There is nothing presented by Green Tree Servicing, LLC showing that it was or is the “Lender.” Given that Green Tree Servicing, LLC was careful to correctly identify the Debtor as “Borrower” (defined by Merriam-Webster to be the person who received the money from the “Lender”). The court cannot identify any bona fide reason for correctly identifying the Debtor but misidentifying Green Tree Servicing, LLC.

FURTHER PROCEEDINGS

Green Tree Servicing, LLC, having appeared before this court on several prior occasions and well aware of the judicial need to have parties and their capacities correctly identified, has now provided the court with a minimal effort to address the court’s concerns. It is now appropriate for the court to act further to get the basic, minimal information necessary to determine what Green Tree Servicing, LLC may properly do; whether what it does actually is authorized by the ultimate principal, Fannie Mae; and what power and authority Bank of America, N.A. had which it could sell to Green Tree Servicing, LLC.

Moving forward, the court will require Bank of America, N.A. to appear and provide the court with an explanation as to how Green Tree Servicing, LLC is before the court purporting to enter into a Loan Modification with the Debtor. Further, what rights and powers it received from Fannie Mae which it purports to have transferred to Green Tree Servicing, LLC.

Additionally, Fannie Mae's participation will be required to confirm what powers it granted to Bank of America, N.A., whether Bank of America, N.A. could have transferred those powers, whether Fannie Mae confirms that it is bound by all Loan Modifications which have and will be signed by Green Tree Servicing, LLC, and if Fannie Mae acknowledges that Green Tree Servicing, LLC is its agent.

Given the nationwide loan servicing by Green Tree Servicing, LLC and its conduct taking place in most likely every federal jurisdiction, the court will also extend the opportunity to the U.S. Trustee, the Federal Trade Commission, the Consumer Financial Protection Bureau, the U.S. Attorney, and such other federal agencies and departments which have appropriate jurisdiction to participate in this process. FN.5.

FN.5. The court directs Green Tree Servicing, LLC and its counsel to Proof of Claim No. 8 filed by Green Tree Servicing, LLC in the Neil Freeman Bankruptcy Case, Bankr. E.D. Cal. 13-20541. That Proof of Claim states under penalty of perjury and subject to the provisions of 18 U.S.C. §§ that Green Tree Servicing, LLC is the creditor. This is contrary to not only the express representations previously made to this court by Green Tree Servicing, LLC that their procedures, practices, and policies had been corrected so proofs of claim which incorrectly and falsely identifies Green Tree Servicing, LLC as the creditor, but also violates the court's prior order prohibiting Green Tree Servicing, LLC from filing such proofs of claim. There are no documents attached to the Proof of Claim which demonstrate the Green Tree Servicing, LLC has transformed from the servicer as testified to under penalty of perjury in this case to a creditor in the Neil case.

In an evidentiary hearing conducted on February 10, 2014, the court discovered another Proof of Claim in which Green Tree Servicing, LLC has stated it is the creditor having a secured claim. In re Raymond and Rhonda Wilson, Bankr. E.D. Cal. 13-34303, Proof of Claim No. 5. The Note attached to the Proof of Claim names GMAC Mortgage, LLC as the payee. A corporate assignment of the deed of trust, executed by Green Tree Servicing, LLC as the attorney in fact for GMAC Mortgage, LLC, purports to assign the deed of trust to itself, Green Tree Servicing, LLC.

Counsel for Green Tree Servicing, LLC can advise the court if his or her law firm are likely to be counsel for Green Tree Servicing, LLC in connection with any proceeding in this court or the United States District Court concerning the violation of the order prohibiting the filing of Proofs of Claim which falsely identified Green Tree Servicing, LLC as the creditor. If so, the court will have counsel added to the service list to receive courtesy copies of any orders to show cause.

CONTINUANCE

On February 24, 2014, the parties filed a stipulation to continue the hearing on the Motion to Approve Loan Modification to 3:00 p.m. on March 25, 2014, to finalize the agreement. The court continues the hearing to that date per the stipulation.

31. 13-34923-E-13 NAKIIA SMITH
TSB-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-23-14 [37]

CASE DISMISSED 2-19-14

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

32. 10-31724-E-13 JAIME/CINDY RODRIGUEZ MOTION TO MODIFY PLAN
WW-1 Mark A. Wolff 1-2-14 [51]

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

Correct Notice Provided. The four Proof of Service Certificates filed state that the Motion and supporting pleadings were served on creditors, the Office of the United States Trustee, and Chapter 13 Trustee on January 2, 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 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 Trustee opposes confirmation of Debtors' Modified Plan on the following grounds:

1. The Trustee is uncertain that service of the plan was proper. On January 2, 2014, Debtors filed their First Modified Chapter 13 Plan, Dckt. No. 54. This plan, along with the Notice of Hearing, Motion, and supporting declaration were served on Creditors, according to four separate certificates of service filed. Dckt. Nos. 55, 64, 67, and 68.

   The Plan filed as Docket No. 54 on January 3, 2014, is missing page 3 of 7. The filed copy skips over from Page 2 of 7, to Page 4 of 7. Debtors then filed another copy of the First Modified Chapter 13 Plan as Dckt. No. 56, which includes page 3 of 7. Dckt. No. 56. The Plan filed as Dckt. No. 46, filed on January 3, 2014, appears to have been served to all creditors, along with Debtors' Schedules I and J, by first class mail. Supplemental Proof of Service, Dckt. No. 58. Trustee is unclear whether service was proper, and whether all creditors received the entirety of the Plan. No explanation was provided for filing and serving the Plan.

   Additionally, the Trustee notes the Debtors served the US Department of Education in Greenville, Texas. The U.S. Department of Education was not served per the Roster of Governmental Agencies, EDC 2-785 (Rev, 2/25/13).

2. The Trustee is uncertain of the payments proposed in Section 6, the Additional Provisions, of the Plan. Debtors state that $27,650 has been paid into the Plan as of December 30, 2013. This is incorrect. $28,050.00 has been paid in to the plan as of December 30, 2013. The last receipt of $400.00 was posted on December 20, 2013. $27,650.00 had been received as of November 30, 2013.

On February 8, 2014, the Debtors filed their Reply that they filed and served the corrected plan, and the amended Schedules I and J. They assert that the original Modified Plan and pleadings were was served on the Department of education in Greenville, Texas and San Francisco, California, as well as the U.S. Attorney in the Eastern District of California (and the court notes from the original proof of service in Washington, D.C., Dckt. 55).

The missing page 3 of the Modified Plan addresses the Class 2 secured claim treatment and the Class 3 surrenders (for which there were none). The two claims provided for in Class 2 are two car loans which are being paid over the loan. These claims are not being reduced, just restructured over the term of the plan. The full Modified Plan was served on these two creditors, Capital One Auto Finance and Wells Fargo Auto Finance. Certificate of Service, Dckt. 58.

The court finds that the Debtors corrected the filing error and promptly provided not only the specifically impacted creditors, but all creditors, with the complete plan. With respect to the Department of Education, the service was sufficient for this plan. No special or unusual treatment is provided for this claim. The Department of Education will have whatever rights to payment which may survive the completion of the plan in this case.

The Debtors have not responded to, or disputed, the Trustee's accounting for payments by the Debtors through December 2013. The order confirming the Plan shall state the Debtors having paid $28,050.00 as of December 30, 2014,

The Modified Plan, as amended to state the amount of payments through December 30, 2014, 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, Debtors' Modified Chapter 13 Plan filed on January 3, 2014, as amended to state that the Debtors have paid the sum of $28,050.00 into the plan for the period through December 30,

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

33. 13-35430-E-13 NLE-1 — CLINTON OLSON — Mary D. Anderson — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK — 1-29-14 [20]

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 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 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 based on three concerns: it is not clear whether Debtors can afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6); the Plan does not work mathematically; and the Plan relies on the valuation of a secured claim.

First, Trustee states that it is not clear whether Debtor can make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of creditors held on January 23, 2014, that he pays $800.00 per month in child support for 3 minor children. It is not clear how much is paid each month for each child, and when the support ends for each child.

Additionally, neither Debtor's Schedule J or the attachment to the Schedule J lists any expense for self-employment, business or personal

taxes. The Debtor lists $4,632.00 in monthly gross income from his business.

Second, the Plan does not work mathematically. The Plan calls for $150,588.00 in total plan payments, at the rate of $4,183.00 per month for 36 months (§ § 1.01, 1.03). The Plan proposes to pay $5,000 in attorney fees, and Class 1 arrears in the amount of $23,986.12. Debtor's ongoing mortgage payment is $2,100.00 and the arrears dividend calls for $400.00 per month. Lastly, a total of $74,960.00 is listed in §2.13. According to the Trustee's calculation, the Plan will take approximately 65 months to complete, and not the asserted 36 months.

Third, the Plan relies on the valuation of a secured claim. Debtors' Plan relies on a Motion to Value Collateral being filed for Wells Fargo, listed as a Class 2C creditor. To date, Debtor has not filed a Motion to Value Collateral. If the motion to value is not filed and granted, Debtor's plan will not have sufficient funds to pay the claim in full.

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.

34. 10-46331-E-13 ALEJANDRO/KERRI HOUSER
DPC-1 John David Maxey

DEBTORS' MOTION OBJECTING TO THE TRUSTEE'S NOTICE OF DEFAULT AND APPLICATION TO DISMISS CASE 2-6-14 [138]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Internal Revenue Service, the United States Department of Justice, the Chapter 13 Trustee, and the Office of the United States Trustee on February 6, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the hearing on the Debtors' Motion Objecting to Trustee's Notice of Default and Application to Dismiss Case to 3:00 p.m. on June 3, 2014. 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 filed an Amended Chapter 13 Plan on October 19, 2010. The Plan was confirmed on February 18, 2011. Order Confirming Amended Chapter 13 Plan, Dckt. No. 61. Debtors' first payment was made on November 22, 2010. The Amended Plan provides for payments of $275 per month for thirty-six (36) months. Debtors' last payment was due on October 25, 2013. Debtors have made all their plan payments.

In his Notice of Default and Application to Dismiss, Trustee asserts that as of January 14, 2014, Debtors are delinquent in the amount of $550. Dckt. No. 136. Debtors state, however, that they have made all payments required under the confirmed plan, and that they are not in default. Debtors assert that under the Notice of Default, the Trustee's own accounting shows that all of the necessary payments have been made, with the last payment having been posted on October 23, 2013 Dckt. No. 146 at 2-3.

Debtors explain that all claims have been paid, as indicated by the "Trustee's Claim Summary." There is one claim, however, that remains in dispute. Debtors have requested that the Internal Revenue Service withdraw its proof of claim because it is currently the subject of litigation in district court. Debtor's Attorney has been representing Joint Debtor Alejandro Vince Houser in the district court litigation entitled *United States of America, IRS v. Alejandro Vince Houser*, DC No.: 2:11-cv-02062-KJM-AC, for the past two years. Debtors state that they are still negotiating an offer to compromise with the Internal Revenue Service, and are engaged in the discovery stage of the district court matter.

Counsel for Debtors state that his firm has made substantial efforts to settle the case, including attending settlement conferences and assembling offers to compromise with the Internal Revenue Service. Counsel states that there was a formal settlement offer submitted to the Internal Revenue Service, which rejected in January 2013. Debtors' Counsel was invited to submit an amended offer if it would address the concerns raised by the Internal Revenue Service.

As of February 6, 2014, the offer is still under consideration by the Internal Revenue Service. The Motion states that counsel for the parties have been in active and regular communications to achieve a settlement, and are engaging in good faith efforts to resolve the matter. Debtor's Counsel believes there is substantial likelihood of settlement; Debtor has agreed to entry of a judgment in full, subject to the terms of a payment plan. The unresolved issues in this compromise concern the amount of the lump sum payment, and the payment plan duration. Upon settlement, Counsel believes that the Internal Revenue Service will withdraw its claim and agree not to object to discharge.

If the Internal Revenue Service Proof of Claim is withdrawn, the alleged defect in the plan would be cured and Counsel believes the Chapter 13 Trustee would have no grounds to base his Motion to Dismiss. Debtors request that the case not be dismissed and that the Chapter 13 Trustee agree to defer a request for dismissal of the case for at least ninety days to allow the parties to resolve the issue of the Internal Revenue Service claim.

Trustee's Notice of Default and Application to Dismiss, DPC-1, was issued on the basis of Trustee's assertion that Debtors have failed to make all of the payments due under the plan. Trustee states,

> Debtor has failed to make all payments due under the plan. As of January 14, 2014, payments are delinquent in the amount of $550.00. Additional payment of $275.00 will become due on January 25, 2014. Therefore, a total amount of $825.00 will be due within 30 days from the date of the service of notice. Dckt. No. 136.

Debtors offer the Trustee's Account Ledger to show that Debtors have made all the requisite payments under their Chapter 13 Plan. The court notes that this document is not filed as an Exhibit, but rather an attachment to the Declaration of Counsel for the Debtors. Dckt. No. 140. Debtors are advised that Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that the motion, points and

authorities, each declaration, and the exhibits document to be filed as separate electronic documents. The court will proceed, however, to consider the attached Account Ledger. Debtors also attach a Claim Summary on their bankruptcy case, purportedly showing that all of their claims have been paid off. Debtors state that the Trustee's Account Ledger shows that Debtors have made all payments required under the confirmed plan, and that there is no payment default. The term of Debtors' confirmed plan is 36 months, and the last payment became due on October 2013.

It appears that the "default" arises if the Internal Revenue Service Claim is allowed in the amount stated in the Service's Proof of Claim. The Debtors believe that they will be able to resolve that dispute and have the claim withdrawn. While getting the Internal Revenue Service to withdraw its Proof of Claim is not a sure thing, the amount in dispute represents a minor amount. Before dismissing this case and having the past thirty-six months of plan payments and efforts be for naught, the court will afford the Debtors the requested ninety days.

The court shall issue a minute order 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 Trustee's Notice of Default 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 Trustee's Notice of Default and Application to Dismiss Case is continued to 3:00 p.m. on June 3, 2014.

35. 10-40834-E-13 PGM-2 — PAUL COSTA AND KAROLYN COLE — Peter G. Macaluso — CONTINUED MOTION TO APPROVE LOAN MODIFICATION — 12-18-13 [54]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve Loan Modification was properly set for hearing on the notice require by Local Bankruptcy Rule 9014(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 3:00 p.m. on March 4, 2014. 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 28, 2014 HEARING

This matter was continued from January 28, 2014, to allow Ocwen Loan Servicing, LLC to provide evidence that it is the creditor or that it is authorized as the named principal to modify this loan as requested.

In their Motion, Debtors stated that Ocwen Loan Servicing, LLC, whose claim the plan provides for in Class 4, had agreed to a loan modification that would reduce the Debtor's monthly mortgage payment to $955.39. A review of the Loan Modification (attached as Exhibit A) showed that Ocwen Loan Servicing, LLC was named as the "Lender" on the loan. Dckt. 57. Proof of Claim No. 12, filed by Onewest Bank, FSB, shows a secured claim on the subject real property. The court notes an Unconditional Transfer of Claim after Proof of Claim filed 11/23/2010 was filed on November 21, 2013, showing a transfer of claim to Ocwen Loan Servicing, LLC. Dckt. 48. The Assignmen was signed by Ocwen Loan Servicing, LLC's attorney, Kristin A. Zilberstein. However, this is not evidence of the real creditor or lender.

The court expressed uncertainty as to how Ocwen Loan Servicing, LLC, could name themselves as "Lender" in a Loan Modification for an obligation that appears to be owed to Onewest Bank, FSB. The court 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 Onewest Bank, FSB. The court noted that 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.

The court issued an order to Debtors and Ocwen Loan Servicing, LLC to file on or before February 14, 2014, any and all properly authenticated documents identifying that Ocwen Loan Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). The court continued the hearing to this date to allow the parties to file the appropriate documentation. FN.1.

FN.1. As a reference for the parties, this court has previously addressed with another servicing company, Green Tree Servicing, LLC, the requirement to accurately identify the status of the party in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111. In addition, Specialized Loan Servicing, LLC and U.S. Bank, N.A. have also addressed this issue. The servicers and this bank have altered their practices and are not improperly listing or identifying the loan servicing company as the creditor when it is not a creditor as defined by 11 U.S.C. § 101(10).

The court acknowledged that Ocwen Loan Servicing, LLC has, and most likely will, in connection with this matter be responsive and address the court's concerns – as well as educating the court to the current practical business issues, and challenges, of maintaining a nationwide business providing these types of services. The court further noted that if Ocwen Loan Servicing, LLC has expanded its business to purchase notes, it should address how it will provide that information to the federal courts.

DECLARATION OF DEBTORS' COUNSEL

In response to the court's order continuing the motion, Debtors' Counsel, Peter Macaluso ("Counsel"), filed a declaration in support of the Motion for Order Approving Loan Modification. Dckt. No. 66. The declaration states that Debtors acknowledge the definition of creditor, as provided for by 11 U.S.C. § 101(10). Counsel notes that Proof of Claim #12 was filed on November 23, 2010 by OneWest Bank, FSB, by Marisol A Nagata, Esq. of the firm Barret, Daffin, Frappier, Treder & Weiss, LLP. A Notice of Mortgage Payment Change, was filed on January 10, 2013, by Craig A. Edelman, "Authorized Agent for OneWest Bank, FSB." Additionally, a Notice of Transfer was filed on November 22, 2013, as Dckt. No. 49.

The "Note" and "Deed of Trust" on the property list the "Lender" as Sierra Pacific Mortgage Company, Inc., and the Deed of Trust names "MERS" as "acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument". The Escrow Account Disclosure Statement lists Indymac Mortgage Services, a division of OneWest Bank, FSB as the Servicer. Debtors also point out that the loan modification offered and accepted by Debtors is from Ocwen Loan Servicing, LLC, references Ashley Hanson. Debtors state that Hanson is a

> Relationship Manager...whom claimed a paralegal, Roxanna Costello, as being responsible for the loan, whom then forwarded me to a Kresmir Dreurevic, Esq., and who did not answer the call, and upon re-dialing it went directly to Attorney, Kelly Rapherty and informed her personally of the Order of this Court.

Declaration of Peter G. Macaluso in Support of Motion for Order, Dckt. No. 66 at 2. Debtors' Attorney then forwarded the court's order to Kresmir Dreurevic.

DECLARATION OF KRISTIN A. ZILBERBERSTEIN

On February 14, 2014, Counsel of Record for Ocwen Loan Servicing ("Ocwen"), Kristin Zilberstein, filed a Declaration in Support of the Motion for Modification. Dckt. No. 68. Ms. Zilberstein stated that she learned of the court's order, requiring Ocwen to file documents in support of its authority to enter into a modification on February 11, 2014. ¶ 2. She states that since that time, her firm, McCarthy & Holthus, LLP, has been "working diligently with Ocwen to obtain the necessary documents to meet the Court's requirement." Id. at ¶ 3.

Ms. Zilberstein states that three days has not been sufficient time to obtain the responsive documents, and that Ocwen will file the documents on or before the February 25, 2014 deadline stated in that order.

A review of the docket shows that Ocwen has not yet filed the requested documents with the court. The court's decision is to continue the hearing on the Motion to Approve Loan Modification to 3:00 pm on March 4, 2014, to permit Ocwen to file and serve the requested documents, and allow time for the court to review the documents produced. The parties shall strive to adhere to the original deadline set for Ocwen to file and serve the requested documents, namely: properly authenticated documents by which it may assert to be the agent of or be granted a power of attorney for Onewest Bank, FSB or any other person who is the actual creditor in this

case; and any other documents by which Ocwen Loan Servicing, LLC purports to be authorized or have the right to modify the loan at issue. These documents shall be filed and served by February 25, 2014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on March 4, 2014.

36. 12-20038-E-13 HECTOR/LEESHA RIVERA — MOTION TO MODIFY PLAN
SJS-5 Scott J. Sagaria — 1-10-14 [79]

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. By the court's calculation, 47 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. In this instance, the Chapter 13 Trustee has filed an opposition to Debtors' Modified Plan.

1. According to the Trustee's calculations, the Debtors' Plan will complete in approximate 60 months, and not the 36 months proposed. Approximately $62,185.00 remains to be paid on unsecured claims under the proposed plan for the required minimum 70% dividend. The proposed plan payment of $1,900.00 available for creditor claims, net of Trustee fees, is $1,805.00. Thus, in dividing $62,185.00 by the $1,805.00 of monthly plan payments, this adds an additional 35 months to the period covered by the plan.

2. Debtors are proposing to decrease the term of the confirmed plan from 60 months to 36 months. Debtors' form B22C DC #1, page 50, indicated that the applicable commitment period is 3 years. **Debtors have provided no explanation of the proposed decrease in term.**

3. Debtors' declaration does not provide explanations for changes in income and expenses.

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.

37. 13-35638-E-13 CHARLES LEONARD **OBJECTION TO CONFIRMATION OF**
NLE-1 Robert P. Huckaby **PLAN BY DAVID CUSICK**
1-29-14 [22]

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 29, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the February 25, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan relies on a pending motion to value a secured claim. 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 a Motion to Value Collateral being filed for CitiMortgage, which is listed in Class 2C. Debtor has filed a Motion to Value Collateral set for the same date as the hearing on this motion, Dckt. No. 18.

The court has granted the Motion to Value the secured claim of Citibank, N.A., RPH-1, and determine the value of the secured claim held by creditor Citibank to be $0.00. Thus, Trustee's singular objection to Debtor's Plan is resolved, and this objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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, Debtor's Chapter 13 Plan filed on December 25, 2013 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit

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

38. 13-35638-E-13 RPH-1 **CHARLES LEONARD** **Robert P. Huckaby** **MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.** **1-23-14 [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 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 741 Tahoe Island Dr., South Lake Tahoe, California. The Debtor seeks to value the property at a fair market value of $300,000.00 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 $611,000.00. Creditor Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately $50,030.00. 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 Citibank, N.A., secured by a second deed of trust recorded against the real property commonly known as 741 Tahoe Island Dr., South Lake Tahoe, 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 $300,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

39. 12-20140-E-13 GARY STEPHENS — MOTION TO MODIFY PLAN
BLG-2 Chad M. Johnson — 1-9-14 [39]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 9, 2014. By the court's calculation, 47 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 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. 09-40341-E-13 CHERYL WILLIAMS — MOTION TO MODIFY PLAN
JDM-3 Edward A. Smith — 1-6-14 [44]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 6, 2014. By the court's calculation, 50 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 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.

41. 09-35543-E-13 ADR-3 — ROBERT/ASHLEY PLACE — Justin K. Kuney — CONTINUED MOTION TO SELL — 12-4-13 [62]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Sell Property 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:

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

Here, the Debtor proposes to sell the real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California. The sales price is $225,000.00 and the named buyer is Olivia P Hormoz. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 65. The Chapter 13 Trustee filed a non-opposition on December 13, 2013.

JANUARY 14, 2014 HEARING

At the hearing on the Motion to Sell, the Debtors appeared and the hearing and advised the court that the Buyer withdrew from the contract. The court continued the hearing to this hearing date to afford the Debtors the opportunity to find a replacement buyer. Civil Minutes of January 14, 2014, Dckt. No. 78.

Nothing further has been filed by Debtors to indicate whether or not Debtors have found a replacement buyer for the subject property.

FEBRUARY 25, 2014 HEARING

To date, nothing has been presented to this court to continue the hearing, such as a new contract or evidence of a potential replacement buyer. However, if the Debtors have a buyer and contract to present to the court, the court may set a schedule for filing amended documents and a continued hearing, if the terms of the replacement buyer are similar to those of the sale as noticed to creditors.

A minute order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Sell is denied without prejudice.

42. 09-48550-E-13 STEVE/KRISTINA MONTOYA — MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff — 1-14-14 [87]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 14, 2014. By the court's calculation, 42 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. In this instance, the Chapter 13 Trustee objects to confirmation to Debtors' Plan on the following grounds:

1. Section 6.01 of Debtors' modified plan proposes plan payments of $694.32 for 44 months, then $525.00 for 16 months. It also indicates a lump sum payment of $2,785.00 shall be paid to HSBC by the next distribution date after January 25, 2014. Section 6.02 indicates that the Class 2 Claim of HSBC will be paid in full with a lump sum payment of $2,785.60 and the distribution of the lump payment will be issued by the next disbursement date after January 25, 2014.

   Debtors' Motion, Dckt. No. 87, states that Debtors are modifying their plan to pay the Trustee a lump sum payment for the purpose of paying HSBC Auto Finance the remaining balance of its secured claim. Debtors' proposed plan payment does not contain language that provides for a lump sum payment of $2,784.60 to be made to the Trustee, only when it is to be disbursed. Trustee notes that a payment of $2,785.60 was posted to Debtors' case on October 28, 2013, but this payment is not included in Debtors' proposed plan payments.

2. Under the proposed modified plan, Debtors need to have paid to the Trustee a total of $33,175.08. Debtor has actually paid $46,660.60 to date, with a difference of $3,485.52 that was paid ahead. The

last payment was posted on February 3, 2014, in the amount of $525.00. Even if a lump payment of $2,785.60 were included in Debtors' proposed plan payments, the plan would still be paid head by $700.52.

3. Debtors' modified plan proposes to pay a lump sum payment of $2,785.60 per the Debtors' prior proposed modified plan, filed on November 5, 2014 that was subsequently denied. Dckt. No. 79. Trustee will issue a check to HSBC to pay off the balance once a modified plan is approved.

As of the date that Trustee filed its opposition on February 10, 2014, however, the principal balance owed to HSBC is $1,110.85, with disbursements having been made on October 31, 2013, for $986.75 principal and $9.45 interest, and January 31, 2014 for $170.92 principal and $16.02 interest.

4. Debtors' proposed modified plan provides for creditor Hyundai Motor Finance in Class 2, Section B, as a claim reduced based on the value of collateral--where no such motion to value the secured claim has been filed. HSBC is provided for in Class 2, Section A, as a claim not reduced based on value of collateral, when this creditor was valued per an order confirming filed on February 25, 2010, Dckt. No. 19. The Trustee has previously raised this objection.

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.

43. 12-25050-E-13 CARLOS/MARTHA MORALES MOTION TO MODIFY PLAN
BLG-4 Chad M. Johnson 1-14-14 [51]

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 14, 2014. By the court's calculation, 42 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 at the February 25, 2014 hearing is 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 14, 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.

44. 13-35850-E-13 NLE-1 BERNADETTE SAROULI Stephen N. Murphy

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
1-30-14 [21]

CASE DISMISSED 2/4/14

Final Ruling: The case having previously been dismissed, the Objection is overruled as moot. No appearance at the February 25, 2014 hearing is required.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation of 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 Objection is overruled as moot, the case having already been dismissed.

45. 11-35060-E-13 RK-4 ANTONETTE TIN Richard Kwun

CONTINUED MOTION TO MODIFY PLAN
12-1-13 [101]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2013. By the court's calculation, 44 days' notice was provided. 35 days' notice is required.

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

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

The court continued the hearing on the Motion to Confirm the Modified Plan to this date, and set a schedule for the Debtor and Trustee to brief the court on unresolved elements of Trustee's opposition to confirmation of the plan. The court ordered Debtor to file supplemental pleadings that on or before January 29, 2014, and for the Trustee to file his reply, if any, on or before February 5, 2014.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee initially opposed the plan on the basis that the debtor incorrectly states attorney fees in section 2.06. Per the Order confirming, attorney fees of $3,500.00 were approved, $1,500.00 was paid prior to filing and $2,000.00 was to be paid through the plan. Dckt. 38. The debtor states additional fees of $2,050.00 shall be paid through the plan which is an estimate of additional fees per Section 6.02. Trustee argued that Counsel is attempting to have additional fees approved without setting it for hearing.

The Trustee also stated that the debtor has included in section 6.03 proposed treatment of creditor Bank of America, N.A. and the Trustee is not certain this is the proper creditor. Trustee states that the claim was transferred from Bank of America, N.A. to EverHome Mortgage Company on October 24, 2013.

Trustee also states that the proposed plan may not be the Debtor's best effort. The debtor reports on Schedule J $420.00 for self-employment tax and includes $420 as a business expense for taxes. Trustee argues that this expense is included twice.

DEBTOR'S RESPONSE

Debtor responds, stating that the business expense were deducted twice and has filed a declaration and amended statement of expenses. Debtor states she has made her home loan payments directly to Bank of America, N.A., the offeror of the trial period plan.

Counsel states he cannot determine whether the services were necessary or beneficial to the debtor.

DECLARATION AND SUPPORTING EXHIBITS

On January 27, 2014, Debtor filed a declaration, revised Schedules I and J, and a copy of her proposed modified Chapter 13 Plan in support of the Motion to Confirm. Dckt. Nos. 115 and 116. In her sworn declaration, Debtor states that the cost of electricity for her household has increased. Debtor further attests to status of other expenses, stating that,

- The cost of water is $61 per month and $100 for garbage and sewer, charged by the City of Elk Grove.
- Laundry for Debtor's of 4 is $40 per month.
- Out of pocket medical expenses for Debtor and her 3 minor sons is $60 per month.

- Debtor attends her Catholic Church every Sunday and contributes a total of $15 in cash each month.

- Debtor calculates the maintenance for the 2001 Lexus 470 that was purchased for me by my mother runs at $50 per month.

- Food for Debtor and her three minor children, upon "reexamination of [her] budget, is $400 per month.

- Debtor's current profit and loss for her business is attached as Exhibit A-2. Dckt. NO. 116. Debtor claims that she cannot afford paying $570 a month for the remainder of her Chapter 13 plan term.

Debtor additionally states that she has timely made all three payments that were due on 10/1/2013; 11/1/2013; and 12/1/2013 to Ever Home Mortgage pursuant to Fannie Mae Trial Period Plan. Dckt. No. 115.

DISCUSSION

The court has already acknowledged that a review of the Proof of Claim Registrar for Debtor's case shows that the Notice of Intent to Transfer Claim from Transferor: Bank of America, N.A. (Claim No. 6) to Everhome Mortgage Company was submitted on October 25, 2013. Dckt. 88. The evidence presented by Debtor that she made payments to Bank of America, N.A. on 10/1/13; 11/1/13 and 12/1/13 pursuant to "Fannie Mae Trial Period Plan" does not negate the fact.

The court still, however, does not follow Counsel's argument regarding attorneys fees. Debtor is stating that an additional fee amount of $2,050.00 be paid through the plan. Section 6.02 of the Modified Plan, attached in Debtor's most current Exhibit B, Dckt. No. 116, still states that "no less than $2,050 in attorney fees will be requested for billable work."

If Counsel has been paid the fees per the Order confirming the Plan, any additional substantial and unanticipated fees must be requested from this court. See Local Bankruptcy Rule 2016-1(c)(3). Debtor's supplemental pleadings are not responsive to Trustee's concern that Counsel is trying to obtain additional fees, without setting such requests for hearings by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

46. 13-34164-E-13 ANGELINA ROBINSON
MMA-2 Mark Alonso

MOTION TO VALUE COLLATERAL OF JOANNE ROBINSON
1-28-14 [40]

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).

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

Below is the court's tentative ruling.

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

Correct Notice Not 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 20, 2014. The Certificate of Service is signed by Mark Fleischman. Fleischman twice states that he served the parties by mail on February 20, 2014. Dckt. No. 44. The Proof of Service, however, was filed with the court on January 28, 2014.

The court cannot determine whether Movant provided the requisite 28 days' notice to potential respondents, as required by Local Rule 9014-1(f)(1). Furthermore, Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. It is not clear whether the parties were actually served on or around January 28, 2014, when the Motion and supporting documents were filed with the court.

The Motion to Value Collateral of Joanne Robinson is denied without prejudice.

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

The court cannot determine if service was properly effected, and if Movant served the motion to the Chapter 13 Trustee, the respondent creditor, and the U.S. Trustee at least twenty-eight (28) days prior to the hearing date. If Movant can provide proper proof of service at the hearing, the court will issue the following alternative tentative ruling.

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 358 S. Wall St., Coos Bay, Oregon. The Debtor seeks to value the property at a fair market value of $75,000.00 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 $77,970.33. Creditor Joanne Robinson's second deed of trust secures a loan with a balance of approximately $40,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor 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 Joanne Robinson secured by a second deed of trust recorded against the real property commonly known as 358 S. Wall St., Coos Bay, Oregon, 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 $75,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

47. 13-34164-E-13 ANGELINA ROBINSON
MMA-3 Mark Alonso

MOTION TO VALUE COLLATERAL OF JOANNE ROBINSON
1-28-14 [45]

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).

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

Below is the court's tentative ruling.

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

Correct Notice Not 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 20, 2014. The Certificate of Service is signed by Mark Fleischman. Fleischman twice states that he served the parties by mail on February 20, 2014. Dckt. No. 44. The Proof of Service, however, was filed with the court on January 28, 2014.

The court cannot determine whether Movant provided the requisite 28 days' notice to potential respondents, as required by Local Rule 9014-1(f)(1). Furthermore, Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. It is not clear whether the parties were actually served on or around January 28, 2014, when the Motion and supporting documents were filed with the court.

The Motion to Value Collateral of Joanne Robinson is denied without prejudice.

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

The court cannot determine if service was properly effected, and if Movant served the motion to the Chapter 13 Trustee, the respondent creditor, and the U.S. Trustee at least twenty-eight (28) days prior to the hearing date.

If Movant can provide proper proof of service at the hearing, the court will issue the following alternative tentative ruling.

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 63180 Noah Rd., Coos Bay, Oregon. The Debtor seeks to value the property at a fair market value of $68,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $100,230.00. Creditor Joanne Robinson's second deed of trust secures a loan with a balance of approximately $30,000. 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 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 Joanne Robinson secured by a second deed of trust recorded against the real property commonly known as 63180 Noah Rd., Coos Bay, Oregon, 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 $68,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

48. 12-34967-E-13 ROBERTA CURTIS MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 1-10-14 [91]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 opposes confirmation of Debtor's plan on the basis that Trustee's objection to Debtor's prior Motion to Confirm, Docket Control No. PGM-3 has not been resolved. This objection was filed on December 3, 2013, as Dckt. No. 82.

Trustee had objected to Debtor's prior Motion to Confirm because Debtor had previously confirmed a plan, Dckt. No. 9, that called for D & M Development to be paid as a Class 2 Claim, which claim is secured by Tierra Buena Tavern, the Debtor's business. The Plan was modified on June 2013, Dckt. No. 64, and called for the surrender of the business. The budget filed in support of the Plan, Dckt. No. 68, showed that Debtor had three minor dependents, a 25 year old significant other, alimony of $600, unemployment of $1,890.00, $500.00 income listed as "Boyfriend –- Including Truck Payment Share," and $500.00 food expense.

Debtor is now attempting to reduce her ongoing payment from $475.00 to $385.00. The Debtor has filed an amended budget, Dckt. No. 80, showing $496.00 in food stamps and an increase in food expenses by $900.00 (actually a net $4.00 increase), no unemployment compensation, and $1,800.00 income from a new job with pay at $10 an hour. Debtor's Declaration, Dckt. No. 79, shows that Debtor is only working 24 hours per week, which would result in only $1,040.00 per month. No other income, other than the $500 contribution, is shown on Schedule I.

Trustee states that Debtor's Current Motion to Modify, PGM-4, essentially presents the same plan that was previously denied confirmation. The proposed modified plan is essentially the same plan that was previously proposed and denied confirmation on December 17, 2013. The only changes made to the current plan are the updating of the amount paid into the plan, as of December of 2013, and an increase to Class 2 dividends by a total of $5.00. Debtor has also filed updated income and expense statements on the new forms, but the information is identical to the information provided in the updated income and expense statements filed in support of the prior proposed modified plan. Dckt. Nos. 80 and 94.

	Schedule J June 28, 2013, Dckt. 68	Schedule J November 8, 2013, Dckt. 80 (identical to Dckt. 90, January 10, 2014)
Electricity and heating fuel	$250.00	$150.00
Home Maintenance	$25.00	$6.00
Food	$500.00	$900.00
Clothing	$25.00	$10.00
Laundry and Dry Cleaning	$100.00	$25.00
Medical and Dental Expenses	$0.00	$3.00
Transportation	$45.00	$5.00

Based on the testimony provided, the court is unsure which, if either, of the budgets and expenses are truthful and accurate. Though afforded the opportunity, the Debtor has declined to testify as to why or how her food expense has almost doubled from $500.00 a month to $900.00 a month. Additionally, how the Debtor has gone from $0.00 a month in medical and dental expenses to $3.00 (and why $3.00 a month is reasonable and truthful). Rather than being accurate testimony as to the Debtor's expenses, the Schedule J form filed as Exhibit C, Dckt. 94, appears to be a fabrication constructed to improperly divert money from creditors into the Debtor's pocket. FN.1.

FN.1. While the concept of testifying truthfully and accurately under penalty of perjury appears not to register with the Debtor, providing false and inaccurate testimony does have consequences. This Debtor may has misstated herself into a position where she cannot prosecute this case in good faith, possibly leading to its dismissal and her having squandered her time in this case.

Thus, 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.

49. 14-20367-E-13 BONNIE HOCK **ORDER RE: RENTAL DEPOSIT FUNDS**
John S. Sargetis **1-31-14 [13]**

Notice Provided: The Court issued an Order Setting Hearing on Rental Deposit Funds, which was served by the Clerk of the Court through the Bankruptcy Noticing Center on JPMorgan Chase Bank, N.A.; Chase Home Finance, LLC; and the Office of the U.S. Trustee on January 31, 2014. 25 days' notice of the hearing was provided.

Tentative Ruling: The court's tentative ruling is to order the $1,000.00 in monies deposited with the Clerk as "rental funds" returned to the Debtor.

The pleadings in this case indicate that a dispute exists between the Debtor and JPMorgan Chase Bank, N.A., concerning a non-judicial foreclosure sale, and whether the Debtor or JPMorgan Chase Bank, N.A. (as the purchaser at the sale) is entitled to possession of certain real property. No landlord-tenant relationship or rental agreement was alleged.

On February 5, 2014, JPMorgan Chase Bank, N.A., filed a Motion for Relief from the Automatic Stay, requesting that the court grant JPMorgan Chase Bank, N.A. relief from the stay to proceed with an unlawful detainer action against the Debtor. Dckt. No. 19. The property at issue is real property located at 6910 Tonzi Road, Ione, California and 6910 Tonzi Road, Garage Unit, Ione California.

JPMorgan Chase Bank, N.A. asserts that pursuant to the Trustee's Deed Upon Sale recorded on January 10, 2012, JPMorgan Chase Bank, N.A., was the successful purchaser of the subject property at a foreclosure sale held on January 3, 2012. JPMorgan Chase Bank, N.A. asserts that it is the legal owner of the property, attaching a certified copy of the Trustee's Deed Upon Sale as Exhibit "A" in support of its motion. Dckt. No. 22. JPMorgan Chase Bank, N.A, moves for relief from the automatic stay under 11 U.S.C. § 362(d)(1), arguing that the evidence demonstrates that Debtor has no right to the continued occupancy of the property, as JPMorgan Chase Bank, N.A., has acquired title to the premises by a prepetition foreclosure sale, and recorded the deed within the period provided by state law.

The Debtor deposited rental funds in the amount of $1,000.00 with the Clerk of the Court, which the Clerk received on January 17, 2014. The court issued this Order Setting Hearing on January 31, 2014, setting a hearing regarding the deposited rental funds on this date. Dckt. No. 13. The question of whether there is a "landlord" to which said monies may be disbursed.

Debtor's Schedules and Statement of Financial Affairs

On Schedule A the Debtor does not list any interest in real property. Dckt. 27 at 3. No leases are listed on Schedule G. *Id.* at 11. On Schedule J the Debtor lists a mortgage or rent expense of $1,000.00 a month; $900.00 a month for electricity/heat/natural gas; $590.00 a month for telephone, cell phone, internet, and satellite/cable services; $0.00 for property/renter's insurance; and $0.00 for property taxes. *Id.* at 15-16.

Though the Debtor is married, her spouses income is not listed on Schedule I. Rather, there is merely a "spouse's net income" amount shown for Debtor's income. *Id.* at 14. No information is provided concerning the source of the income, deductions, and methodology in computing "spouse's net income."

In response to Question 1 of the Statement of Financial Affairs the Debtor has stated that her 2014 year-to-date income has been $651.00, her 2013 Income was $11,200.00, and her 2012 Income was $12,000.00. (Each is stated merely as "estimated income," with no footnote as to why such information is merely estimated, as opposed to actual.) No information is provided for spouse's income.

DISCUSSION

The court has not been provided with any information as to any landlord tenant relationship for which the payment of the monies deposited with the court disbursed to a landlord. No evidence has been presented that there is any lease or rental relationship for real property between the Debtor and JPMorgan Chase, N.A. The file reflects that JPMorgan Chase Bank, N.A. asserts that it foreclosed on real property which was owned by the Debtor.

The court does not enter into the fray, to the extent one may exist, over the asserted foreclosure sale and who owns the real property. The parties are left to their own devices and rights to assert their various claims and defenses in a court of proper jurisdiction.

The court orders the Clerk of the Bankruptcy Court to return the $1,000.00 deposited with the Court pursuant to the certification by Debtor as a "Tenant of Residential Property" in the Bankruptcy Petition. Dckt. 1 at 2. The court makes no determination whether there exists, or does not exist, any landlord-tenant relationship between the Debtor and JPMorgan Chase Bank, N.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 hearing on the Court's Order regarding Rental Deposit Funds having been conducted, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Clerk of the Bankruptcy Court to return the $1,000.00 deposited with the Court pursuant to the certification by Debtor as a "Tenant of Residential Property" in the Bankruptcy Petition. Dckt. 1 at 2. The court makes no determination whether there exists, or does not exist, any landlord-tenant relationship between the Debtor and JPMorgan Chase Bank, N.A.

50. 13-35369-E-13 VASILIOS TSIGARIS
PPR-1 Marc A. Caraska

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
1-23-14 [23]

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee 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 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:

U.S. Bank, N.A. ("Creditor"), which is the successor trustee to Wachovia Bank, N.A. (formerly known as First Union National Bank), as Trustee for Long Beach Mortgage Loan Trust 2001-4, its assignees and/or successors in interest, holds a first lien on Debtor's real property located at 1940 Wesley Drive, Folsom, California.

The Creditor opposes confirmation of the Plan on the basis of its assertion that the Plan is not adequately funded under 11 U.S.C. § 1325(a)(5)(B)(ii). Creditor acknowledges that it has not yet filed its Proof of Claim, which will disclose the exact amount of its claim. The bar date for Proof of Claims is April 16, 2014. Creditor nonetheless represents that there is a prepetition arrearage on the loan, and the $22,850.00 provided for in the Plan is insufficient to cure the arrearage. Creditor states that even if all payments are tendered pursuant to the Plan, Creditor believes that the payments will not be sufficient to satisfy the Creditor's claim in full. Thus, the Plan does not provide adequate protection of Creditor's interests as required by 11 U.S.C. § 361.

Creditor does not, however, provide the exact prepetition arrearage on the loan, making it impossible for the court to determine the payment

that creditor is entitled to as adequate protection for its secured interest in Debtor's real property. The court cannot determine whether the amount provided in the plan for the Creditor, which appears to be the $22,850.00 amount listed as the arrearage of Select Portfolio Servicing, Inc. in Class 1 of the Plan, protects Creditor from the alleged diminution in value of their collateral, during the pendency of Debtor's bankruptcy case. The monthly contract installment amount for the claim on Debtor's residence is $1,753.00.

Creditor has neither filed a Proof of Claim, nor filed any evidence showing what it believes what the depreciation of value would be for the property located at 1940 Wesley Drive, Folsom, California. Creditor does not offer an estimate of a reasonable monthly payment that would provide for the decrease in value of its interest in the property. Creditor admits as much in its Objection to the Chapter 13 Plan. Dckt. No. 23 at 2. The court cannot, however, accept the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II) without these figures.

In the absence of evidence by the creditor showing the exact amount of prepetition arrearage owed (as calculated by the Creditor), and estimates of what amount would provide sufficient adequate protection for Creditor's security interest in Debtor's residence, it is impossible for the court to determine whether the Plan complies with 11 U.S.C. § 1325(a)(5)(B)(iii)(II) and provides the Creditor with adequate protection payments during the period of the plan. Thus, Creditor's objection is overruled. Additionally, the court is set to sustain the Objection of the Chapter 13 Trustee to this same plan on this same hearing date, thereby rendering overruling of this Objection of little consequence. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

The court shall issue a minute order 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 without prejudice.

51. 13-35369-E-13 VASILIOS TSIGARIS **OBJECTION TO CONFIRMATION OF**
TSB-1 Marc A. Caraska **PLAN BY DAVID CUSICK**
1-23-14 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on 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 following grounds:

1. Debtor has failed to provide Trustee with a tax transcript or copy of the 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 under 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. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line #3b, Debtor's listed ordinary and necessary business expenses are $3,800. Debtor did not properly complete boxes 24A through 59 on Form B22C. If the business expenses of $3,800.00 are added back in, there is an annualized income on line #15 of $91,200.00, which is greater than the applicable median family income of $62,009.00 listed on line 16. *In re Wiegand*, 386 B.R. 238, 2008 Bankr. LEXIS 1256, 59 Collier Bankr. Cas. 2d (MB) 1103 (B.A.P. 9th Cir. 2008).

3. Debtor has not provided for a monthly dividend for attorney fees in § 2.07 of the Plan.

4. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's prior case, Case No. 13-30202 filed on August 1, 2013, listed a 2006 Nissan. However, Debtor has not listed this vehicle on Schedule B, and does not exempt any equity on Schedule C.

5. The Statement of Financial Affairs appears to be incorrect. The Statement of Financial Affairs, Question #18, states that Debtor's business, "Willow Produce" closed on July 2013. However, Debtor admitted at the First Meeting of Creditors admitted that the business was still operating.

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.

52. 13-33071-E-13 SANTOKH MAHAL — **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
NLE-1 Pro Se — **11-26-13 [24]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 26, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

DECEMBER 17, 2013 HEARING

At the original hearing on the Objection to Confirmation, the court continued the matter to this hearing date, and established a set of briefing deadlines to permit Debtor to address Trustee's concerns about Debtor's Plan. The Debtor was to file and serve opposition and proposed amendments to the Plan on or before February 3, 2014. A reply, if any, from the Trustee was to be filed and served on or before February 14, 2014. Civil Minute Order, Dckt. No. 38.

The Chapter 13 Trustee initially opposed confirmation of the Plan on the basis that Debtor had failed to provide the Trustee with proof of income for the 60 days preceding filing of the bankruptcy. Debtor had also failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

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

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

Trustee asserted that the Debtor's plan may not be the best effort. Debtor is below median income and proposes a 36 month plan paying $388.88 per month with 5% guaranteed dividend to unsecured claims. The Debtor's projected disposable monthly income listed on Schedule J totals $628.00 and the Debtor is only proposing a plan payment of $388.88. Debtor deducts $950.00 for ongoing mortgage/rent expense and lists his ongoing monthly mortgage payments to be paid through the plan in Class 1. Trustee states the Debtor's disposable income/plan payment should total $1,578.00.

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

SUPPLEMENT TO TRUSTEE'S OBJECTION TO CONFIRMATION

Debtor has not filed any further pleadings or amendments. On February 3, 2013, Trustee filed a Motion to Dismiss, TSB-2, in this case, which is scheduled to be heard on February 19, 2014. Trustee filed the Motion due to Debtor's failure to make plan payments. Debtor is currently $778.64 delinquent, and has missed 2 plan payments since the commencement of the Plan. Dckt. No. 54.

As it stands, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court's decision is to sustain the objection and deny confirmation of 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 sustained and the proposed Chapter 13 Plan is not confirmed.

53. 12-20173-E-13 LAVALLE/MARILYN GARY — MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso — 1-13-14 [80]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2014. By the court's calculation, 43 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 Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having

been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Modified Plan. No appearance at the February 25, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee has filed Limited Objection to Debtors' Motion to Modify the Chapter 13 Plan. The Trustee states that the order confirming plan, Dckt. No. 21, filed on March 5, 2012, reflected attorney's fees of $3,500, of which $2,500 was paid prior to filing.

The proposed plan, filed on January 13, 2014, however, lists attorney's fees as $1,000 paid prior to filing, with an additional $2,500 to be paid into the Plan. Trustee states that he would not oppose clarification of the attorney's fees being placed in the order confirming the Plan.

REPLY OF DEBTORS TO TRUSTEE'S LIMITED OBJECTION

Debtors respond by acknowledging that Section 2.06 of the Plan should state that Debtors' attorney of record was paid $2,500 prior to the filing of the case. Subject to prior court approval, additional fees of $1,000.00 shall be paid through the Plan. Debtors request that this correction be included in the order confirming 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 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 13, 2014 is confirmed, with Section 2.06 of the Plan being revised to state:
>
> > Debtor's attorney of record was paid $2,500 prior to the filing of the case. Subject to prior court approval, additional fees of $1,000.00 shall be paid through this plan.
>
> **IT IS FURTHER ORDERED** that the Debtors 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.

54. 10-26175-E-13 BRENDA CALHOUN MOTION TO MODIFY PLAN
SDB-10 W. Scott de Bie 1-10-14 [148]

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.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Modified Plan. No appearance at the February 25, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee a Limited Objection to Debtor's Motion to Modify the Chapter 13 Plan After Confirmation, merely to point out that Debtor's Modified Plan, filed on December 2, 2013, was confirmed at the hearing on January 14, 2014 in error. Dckt. No. 157.

Debtor filed a withdrawal of its Plan, SDB-9, on January 10, 2014. The court, however, erroneously granted the previous Motion to Confirm the Modified Plan, SDB-9 and proceeded to confirm the withdrawn plan. The Motion to Confirm the Modified Plan, SDB-9, was not called for appearance at the hearing, because it was already disposed of by a Final Ruling issued by the court in its prehearing dispositions (Honorable Judge Ronald Sargis Posted Rulings for January 14, 2014 Hearings, Matter No. 78).

The court recognizes that it inadvertently confirmed the Modified Plan filed on December 2, 2013, Dckt. No. 142. This particular plan was withdrawn on January 10, 2014 by Debtor's Attorney. Dkct. No. 146. The court will vacate the Civil Minute Order granting Debtors' Motion to Confirm the Chapter 13 Plan filed on December 2, 2013, Dckt. No. 157.

The Debtors have filed evidence in support of the confirmation of the current Chapter 13 Plan, at issue in the instant Motion to Confirm. No opposition to the Plan and 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 10, 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.

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

> The court having entered an order confirming the Debtor's Chapter 13 Plan in error, the Motion to Confirm such Plan having been properly set for hearing on February 25, 2014, and upon review of the files in this case and good cause appearing,
>
> **IT IS ORDERED** that the Order granting Debtor's Motion to Confirm the Chapter 13 Plan, SDB-9, filed on January 16, 2014, is vacated, having been entered prematurely in error by the court.

55. 13-33077-E-13 CATHERINE WADE **MOTION TO CONFIRM PLAN**
JKF-1 Joseph Feist **12-12-13 [36]**

CASE DISMISSED 1/21/14

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.

56. 13-35878-E-13 MICHAEL JOHN/TARA HOOPER — AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
NLE-1 Peter G. Macaluso — 1-29-14 [23]

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 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 cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), as Debtors' Plan relies on the Motion to Value the Secured Claim of the City of Jackson, which is set for hearing on February 25, 2014, the same day as this motion. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full.

   The court has granted Debtors' Motion to Value the Secured Claim of the City of Jackson, PGM-1, on this hearing date. Thus, this part of Trustee's Objection is resolved.

2. The Plan is not Debtors' best efforts under 11 U.S.C. § 1325(b), on the basis that Debtor did not report all income, and the status of Debtors' exact expenses are unclear.

   a. Question #2 of Debtors' Statement of Financial Affairs reports Debtors' Federal Tax Refunds for 2012 and 2011. Debtors received a refund of $4,463.00 for the tax year of

2012 and $4,877 for 2011. No future tax refund income is projected on Schedule I. While the Trustee has received and reviewed the tax returns, Trustee has not filed the returns as Exhibits, but will submit the returns if requested.

For the tax year of 2012, Debtors received $4,463.00 in a federal tax refund based on their total tax payments of $3,081.00 where $0.00 tax was due. Of the $4,463.00 refund, $1,382.00 was received from Debtors claiming the Child Tax Credit, since Debtors' dependents are reported as ages 10, 7, and 3. Debtors are retaining their real property, and it appears that their tax deductions in the future are likely to remain the same or similar. If Debtors included this income in their monthly income calculation, dividing the income monthly throughout the year, they would have at least $371.91 per month in additional income. Continued tax refunds appear likely, and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

b. On the issue of expenses, Debtors' Statement of Financial Affairs, Question #7 does not list any gifts or charitable contributions made within one year of this case.

Schedule J, line #14 lists donations in the amount of $200.00. Trustee does not believe that Debtor will have a charitable donation expense in the amount of $200.00 per month. Debtors' 2012 Federal Tax Return lists gifts to charity in the total amount of $690.00, or approximately $57.50 per month.

If Debtor included the what appears to be phantom $200.00 charitable expense in their plan payment the Trustee, Debtors' Plan payment could be approximately $721.91 per month ($150.00 + 371.91 + 200.00 = $721.91).

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

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

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

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

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

57. 13-35878-E-13 MICHAEL JOHN/TARA HOOPER — MOTION TO VALUE COLLATERAL OF
PGM-1 Peter G. Macaluso — CITY OF JACKSON
1-28-14 [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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 28 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 123 Terry Place, Jackson, California. The Debtor seeks to value the property at a fair market value of $145,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $149,0250. Creditor City of Jackson's second deed of trust secures a loan with a balance of approximately $184,000. 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 the City of Jackson secured by a second deed of trust recorded against the real property commonly known as 123 Terry Place, Jackson, 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 $145,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

58. 10-43981-E-13 SHAUN/PAMELA MYERS
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY(S), FEES: $1,190.00, EXPENSES: $0.00
1-27-14 [99]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 25, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Application for Additional Attorney Fees for Fees is granted. No appearance required.

FEES REQUESTED

Peter Macaluso, Counsel for the Debtor ("Counsel"), makes a Application for Additional Attorney Fees in this case. The period for which the fees are requested is for the period of August 17, 2012 through November 4, 2013.

Description of Services for Which Fees Are Requested

Counsel argues that the case presented unanticipated legal tasks, due to multiple motions to dismiss that were filed against Debtors for their failure to make plan payments. As a result, Counsel states that he performed actual, reasonable, necessary, and unanticipated postconfirmation tasks that were later required in Debtors' case. The application reflects that Counsel spent 16.15 hours to obtain confirmation of the Plan, and 12.15 hours for post-confirmation tasks, of which 6.20 hours were dedicated to performing anticipated work, and 5.95 hours of which were spent doing unanticipated work. Post confirmation work included preparing and filing a Motion to Modify Plan, and responding to motions to dismiss by maintaining correspondence and communications with the Debtor clients to maintain the case.

Counsel prepared and filed a Motion to Modify Debtors Plan. For this Motion, Counsel performed the following tasks: reviewing the Motion to Dismiss filed by Trustee, communicated with clients regarding the status of their payments and their delinquency, preparing a new plan, reviewing objections to the motion, meeting with Debtors to discuss the Objection to Motion, filing a response to the Objection, and appearing at the hearing on the Motion.

Counsel also performed additional work in responding to Trustee's Motions to Dismiss. For this motion, Counsel received and reviewed the Motion to Dismiss filed by the Trustee, prepared and sent letters to the Debtors regarding the Motion, called the Debtors regarding the delinquency and Debtors' ability to cure, sent letters to Debtors regarding the Motion, and communicated with Debtors regarding the possible dismissal.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that Counsel filed a successful Motion to Modify Debtors' Chapter 13 Plan. Order, Dckt. No. 90. Counsel filed a Motion to Confirm the Modified Plan in September, 2012, which the

Chapter 13 Trustee initially opposed because of an incorrect listing of the claim amount paid prior to the surrender of Debtors' vehicle to their secured creditor, Chrysler. Trustee also objected to the lack of clarity regarding the source of Debtors' income, because of the conflicting information provided by Debtors on their employment. Trustee also objected to the calculation of plan payments, and insufficient information on the impact of Debtors' divorce on their respective finances, including their car and rental expenses.

At the hearing, however, Debtors provided additional information concerning their divorce, their separate financial information, and other aspects of their finances to resolve the Trustee's opposition to confirmation of their Plan. Counsel's efforts led to the confirmation of the Modified Plan on October 23, 2012. Civil Minutes, Dckt. No. 87.

FEES ALLOWED

The hourly rates for the fees billed in this case are $200.00/hour for counsel for 5.95 hours of actual, reasonably, necessary, and unanticipated work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $1,190.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case. Counsel does not seek for the allowance and recovery of costs and expenses in this case.

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

Attorneys' Fees	$1,190.00
Costs and Expenses	$ 0.00

For a total final allowance of $1,190.00 in Attorneys' Fees and Costs in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Counsel for Debtors
> Applicant's Fees Allowed in the amount of $1,190.00
> Applicants Expenses Allowed in the amount of $0.00,

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

59. 13-34982-E-13 NLE-1 | **HUGO HERREROS** Thomas O. Gillis | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 1-7-14 [27]

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. By the court's calculation, 28 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is dismissed pursuant to the Trustee's request. No appearance is required.

FEBRUARY 4, 2014 HEARING

At the original hearing on the Objection to Confirmation of Plan, held on February 4, 2014, the court decided to continue the Objection to this hearing date, to permit the Debtor to file and serve a declaration providing details on when the subject vehicle was purchased, and the source of the funds used for purchase.

REVIEW OF THE OBJECTION

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

1. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because his Plan relies on pending motions. The subject motions are the Motion to Value Collateral of Wells Fargo Mortgage, TOG-1, and the Motion to Value Collateral of Wells Fargo Mortgage, TOG-3, both of which were set for hearing on January 14, 2014.

   On January 14, 2014, both Motions to Value were granted (Dkct. Nos. 35 and 36), thereby rendering this part of Trustee's objection moot.

2. Trustee argued that Debtor may not be able to make the payments under the plan, or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at his 341 Meeting, held on January 2, 2014, that he has changed places of employment and is now working in the Bay Area, **causing his expenses to change as well. Debtor has** not yet provided accurate current financial information for his expenses.

3. Debtor reported at his 341 Meeting that **he owns a 1998 Ford** Expedition that is not listed on Schedule B. Unless Debtor amends his Schedule B, and files a declaration to show that he has disclosed assets, the plan may not fulfill the requirements of 11 U.S.C. § 1325(a)(4).

Debtor filed Amended Schedules on January 27, 2014 (Dckt. No. 37). Debtor amended his Schedule B to reflect that he owns a 1998 Ford Expedition, which appears to be in his personal possession and is located at his residence.

The court noted that Debtor's changes to the income and expense information on his Schedules I and J are still unclear. Debtor informed Trustee that he is now working in the Bay Area, but in his Amended Schedule I, Debtor reports that he is now employed with Evolution Hospitality, LLC, located in San Clemente. He reported having been employed there for one month, and indicates that he is now receiving $2,899.00 in monthly income, resulting in a $167.00 increase in Debtor's income when compared to the $2,732 income Debtor listed on his original Schedule I, filed on November 24, 2013. Debtor's expenses have also increased from $2,617 on his original Schedule I, to $2,784 as listed in his Amended Schedule I.

Further, it appeared to the court that the information provided in Amended Schedules I and J under penalty of perjury are false. The income and expenses are those as of the commencement of the case, which for this Debtor was November 24, 2013. However, on Schedule I the Debtor states under penalty of perjury on Amended Schedule I that he has been employed for only one month. Amended Schedules I and J were signed on January 27, 2014 (though the Debtor chose not to date his signature, the court infers that he was adopting the date the schedules were signed by his counsel).

The change in expenses stems from Debtor now paying more for "personal care products and services," at a rate of $49, real estate taxes at $8, transportation expenses (which rose from $200.00 to $350.00), and an increase in clothing, laundry, and dry cleaning expenses from $20 to $49. Although Debtor has complied with Trustee's requests to report his changes in income, and listed the 1998 Ford Expedition originally omitted from his Schedule B, Debtor has not filed a declaration stating that he has disclosed all assets. It is also unclear whether any creditors hold a security interest in the vehicle.

The court affirmed the necessity of Trustee's request, stating that Trustee's demand for a declaration is a important, necessary act of the Debtor. The amended schedules appear to be statements made under penalty of perjury which are false on their face. If post-petition changes have occurred in the Debtor's income and expenses, he must provide testimony under penalty of perjury of the current information. He cannot falsely

amend schedules and misstate financial information. Further, Debtor omitted a substantial asset that Debtor did not list in his schedules, and failed to include the vehicle in his bankruptcy documents until Trustee brought the instant objection. His credibility is already compromised. Absent a declaration and explanation from Debtor that he has disclosed all assets, the court cannot determine whether the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

TRUSTEE'S REPLY TO DEBTOR'S RESPONSE TO OBJECTION TO CONFIRMATION

On February 2, 2014, Debtor responded to Trustee's Objection, indicating that Debtor had filed amended Schedules B, C, I, and J. Dckt. No. 37. The amendment shows Debtor's new employment and income information. This resolves the Trustee's concerns over whether Debtor can afford his plan.

On February 18, 2014, the Trustee filed his request that the court dismiss the Objection to Confirmation and confirm the Debtor's Plan. Reply, Dckt. 44.

The court shall issue a minute order 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, the Chapter 13 Trustee requesting that his Objection to Confirmation be dismissed and the Chapter 13 Plan be confirmed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed, Debtor's Chapter 13 Plan filed on November 24, 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.

60. 13-31986-E-13 ASHLEY BAKER
TSB-1 Peter L. Cianchetta

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
10-24-13 [35]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the** Objection to Confirmation of Plan **was dismissed without prejudice, and the matter is removed from the calendar.**

61. 13-35992-E-13 BURT/SILVIA VARNER
ACK-1 Aaron C. Koenig

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
1-24-14 [23]

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 motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 8434 Los Serranos Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of $301,000.00 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 $321,566.00. Creditor The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately $42,157.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Bank of New York Mellon, secured by a second deed of trust recorded against the real property commonly known as 8434 Los Serranos Way, Citrus Heights, 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 $301,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

62. 13-35992-E-13 BURT/SILVIA VARNER **OBJECTION TO CONFIRMATION OF**
NLE-1 Aaron C. Koenig **PLAN BY DAVID CUSICK**
1-29-14 [29]

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.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the February 25, 2014 hearing is required.

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's decision, however, is to grant the Motion to Value the Secured Claim of the Bank of New York Mellon, ACK-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 is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

63. 10-27197-E-13 LARRY SMITH
PGM-7 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY(S), FEES: $1,460.00, EXPENSES: $0.00
1-16-14 [123]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 16, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Application for Additional Attorney Fees for Fees is granted. No appearance required.

FEES REQUESTED

Peter Macaluso, Counsel for the Debtor ("Counsel"), makes a Application for Additional Attorney Fees in this case. The period for which the fees are requested is for the period of May 10, 2010 through February 14, 2012. The order of the court approving employment of counsel (and more specifically, to substitute Counsel in the place of Debtor Larry Smith) was entered on May 5, 2010. Dkct. No. 21.

Description of Services for Which Fees Are Requested

Counsel argues that the case presented unanticipated legal tasks, and that he performed actual, reasonably, necessary, and unanticipated postconfirmation work as required in Debtor's case. Counsel states that in total, he has spent: 14.55 hours in obtaining confirmation, and 11.85 hours post-confirmation, 4.55 hours of which were anticipated and 7.30 hours which were unanticipated. Post confirmation consisted of preparing and filing the Motion to Approve Loan modification and Motion to Modify plan, and subsequent correspondence and meetings with clients to maintain the case.

Counsel prepared and filed a Motion to Modify Debtor's Plan, the responsibilities for which included drafting the Motion; reviewing objections to confirmation filed by Trustee and Creditor Wells Fargo Bank; appearing on the Motion to Modify; and preparing an Order to Modify to the Trustee for the Trustee's signature.

Counsel also drafted and filed a Motion to Approve the Loan Modification entered between Wells Fargo Bank, N.A. and Debtor. Counsel corresponded with clients and the Bankruptcy Department of the lender to check on the status of the loan modification, and reviewed the draft copy of the Modification Agreement. Counsel prepared and sent a copy of the loan modification and declaration to Debtor for his review and signature, and prepared and filed a Motion to Approve the Loan Modification.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that Counsel’s services resulted in several successful modifications of the Debtor’s Chapter 13 Plan, the last of which was achieved on August 26, 2011. Dck. No. 114. Counsel also prepared and filed a Motion to Approve the Loan Modification with Wells Fargo Bank, N.A., which was granted on February 14, 2012. Dckt. No. 121. The order granting the Motion to Approve the Loan Modification authorized Debtor to amend the terms of his loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 13785 French Town Road, Oregon House, California. Counsel argues that both matters were unanticipated, as the Debtor had received a Motion to Dismiss the case, and the Debtor did not expect to secure a loan modification.

FEES ALLOWED

The hourly rates for the fees billed in this case are $200.00/hour for counsel for 7.3 hours of actual, reasonably, necessary, and unanticipated work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys’ fees in the amount of $1,460.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case. Counsel does not seek for the allowance and recovery of costs and expenses in this case.

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

Attorneys' Fees	$1,460.00
Costs and Expenses	$ 0.00

For a total final allowance of $1,460.00 in Attorneys' Fees and Costs in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Counsel for Debtor
> Applicant's Fees Allowed in the amount of $1,460.00
> Applicants Expenses Allowed in the amount of $0.00,
>
> **IT IS FURTHER ORDERED** that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.