UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 11, 2014 at 3:00 p.m.

---

1. 13-32601-E-13 DJC-2 | **BRIAN ZIELKE AND AMANDA HILL**
Diana J. Cavanaugh | **MOTION TO CONFIRM PLAN**
1-28-14 [53]

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 28, 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 28, 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. 14-20006-E-13 RYAN/MEGAN ROSTRON — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Scott J. Sagaria — 2-13-14 [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 February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to continue the hearing to 3:00 p.m. on April 25, 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:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan may not be feasible. Trustee states that at the meeting of creditors Debtors testified that they are moving to Indianapolis, Indiana at the end of February and both have new jobs there. They indicated that Mr. Rostron's new job started March 3, 2014 and Mrs. Rostron's new job starts March 10, 2014. Trustee states the Debtors income and expenses will change significantly but will not be known until Debtors have obtained at least 30 days of pay at their new jobs.

Under the proposed Chapter 13 Plan the Debtors are to make monthly

Plan payments of $1,125.00. Plan, Dckt. 6. Debtors' counsel has been paid a retainer of $4,000.00 for prosecuting this case. The Class 2 claims require payments for Debtors' two automobiles and a motorcycle. No other claims are to be paid under the Plan, with a 0% dividend for creditors holding general unsecured claims. On Schedule F the Debtors list $67,179.00 in general unsecured claims. Dckt. 1 at 23.

The proposed plan payments are premised on the Debtors' income as of the commencement of this case, which was only $2,259.59 (with the Debtor being unemployed). *Id.* at 27. The expenses shown on Schedule J are $1,25.09. *Id.* at 29. However, these expenses do not appear to be realistic because it states under penalty of perjury: (1) $0.00 for rent/mortgage, (2) $175.00 for food and housekeeping supplies for two adults, and (3) $0.00 for medical and dental expenses. Rather than an accurate statement of expenses, this appears to be a fabrication to support the payments under the plan for the three vehicles for two adults. (What this court has commonly called a "liar's declaration.)

Rather than denying confirmation of this Plan, the court continues the hearing to 3:00 p.m. on April 25, 2014. This will allow the Debtors and their counsel to file a Response which includes true and actual current income expenses from their new employment and the accurate, truthful expenses from their new home in Indiana. The Response Pleadings, supported by competent evidence, shall be filed and served on or before March 28, 2014. Reply, if any, to the Response Pleadings, shall be filed and served on or before April 7, 2014.

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

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

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

3. 11-37113-E-13 TEVIN/JESSICA TIANGTRONG MOTION TO SELL
PGM-2 Peter G. Macaluso 2-7-14 [50]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 7, 2014. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2) 21 day notice and L.B.R. 9014-1(f)(1) 14-day opposition filing requirement.)

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). Here, the Chapter 13 Trustee filed an opposition 15 days prior to the hearing on February 24, 2014. Creditor Nationstar Mortgage, LLC filed a conditional opposition 14 days prior to the hearing on February 25, 2014.

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

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

Here, the Debtor proposes to sell the real property commonly known as 304 Armida Court, Lincoln, California (hereinafter "Real Property"). The sales price is $360,000.00 and the named buyers are Mark Parisius and Jennifer Parisius. The terms are set forth in the Purchase Agreement, filed as Exhibit B in support of the Motion. Dckt. 53.

SERVICE

However, Debtors have not provided proper notice on the parties as required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Federal Rule of Bankruptcy Procedure 2002(a)(2) requires 21 days notice and Local Bankruptcy Rule 9014-1(f)(1) requires a 14-day opposition filing requirement. Therefore, 35 days' notice is required. Only 32 days notice was provided.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Trustee opposes to the Motion to the extent the Debtor seeks to sell the property without addressing the obligation of a second deed of

trust and a prior stipulation between Debtor and Creditor.

Debtor and Creditor First American Title Insurance Company's predecessor, USAA Federal Saving Bank, stipulated that the Real Property was valued at $200,000.00 and was subject to a senior deed of trust which exceeded $200,000.00. Thus Creditor's claim was deemed as a general unsecured claim. The stipulation also states that the avoidance of the second deed of trust is dependent upon the completion of the plan and discharge. Dckt. 31. USAA Federal Saving Bank later filed a Substitution of Trustee and Deed of Reconveyance. The Trustee argues that this document is not a release of the note.

The Real Property now has a pending offer for $360,000.00, which will generate net proceeds in the approximate amount of $70,107.38 in excess of the senior lien. According to Debtors' Motion to Value, the second deed of trust was $71,794.00. However, Debtors do not specify whether the proceeds will be used to satisfy their obligation in the second deed of trust, be paid into the Plan, or otherwise disposed of in this case.

The Trustee therefore objects to the Motion to Sell, claiming that Debtors attempt to obtain a windfall and prevent it from being subject to a modified plan. The Trustee asks that the court deny the motion unless these matters are addressed.

CREDITOR NATIONSTAR MORTGAGE, LLC'S CONDITIONAL OPPOSITION

In its opposition, Nationstar Mortgage, LLC (hereinafter "Nationstar") claims that they are the holder of a first deed of trust against the Real Property, which secures a note in the amount of $250,000.00. According to Nationstar, they are entitled to the full payment of their claim pursuant to 11 U.S.C. § 363(f). Nationstar states it will not object to the motion as long as they receive full payment of the lien.

DEBTORS' REPLY

Debtors have filed a Reply, which makes certain factual allegations. Dckt. 62. No evidence has been presented in support of the factual allegations, only the arguments of counsel. First, it is asserted that while the Debtors first sought to conduct a short sale, "it came to light that the second deed of trust had been released. With this knowledge the debtors' have amended their exemption which would protect the proceeds of the sale."

However, in reviewing the Stipulation between the Debtors and the creditor having the claim secured by the Second Deed of Trust, there has been no "release" of a deed of trust. Rather, upon completion of the Chapter 13 Plan and the valuation of the creditor's secured claim pursuant to 11 U.S.C. § 506(a) is final, the second deed of trust will be reconveyed. Stipulation, Dckt. 31. This is consistent with the court's order based on the Stipulation, which only values the secured claim of USAA Federal Savings Bank to be $0.00, with the balance to be paid as a general unsecured claim through the Chapter 13 plan. FN.1.

FN.1. This court has extensively addressed the legal theories by which a

debtor can achieve a "lien stip" through a completed Chapter 11, 12, or 13 case. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013); *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).

On February 4, 2014, the Debtors filed an Amended Schedule C in which the Debtors claim a $100,000.00 exemption in the proceeds in excess of the obligation secured by the First Deed of Trust. On February 24, 2014, the Chapter 13 Trustee filed an Objection to the amended exemption. Dckt. 57. It is asserted that the exemption may violate 11 U.S.C. § 551 and California exemption law.

Based on the failure to properly notice the parties, the failure to address the second deed of trust on the property, and the failure to provide for the net proceeds in excess of the claim secured by the first deed of trust, the court denies the motion without prejudice.

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 is denied without prejudice.

4. 13-35413-E-13 ROBERT JEFFREY **MOTION TO CONFIRM PLAN**
RJ-2 Pro Se **1-27-14 [35]**

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 all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2014. By the court's calculation, 43 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 court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to deny the Motion to Confirm the Amended Plan as moot. No appearance at the March 11, 2014 hearing is required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on February 6, 2014 (set for hearing on March 25, 2014). The filing of a new plan is a *de facto* withdrawal of the pending Plan. The Motion is denied as moot and the plan is not confirmed.

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

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

5. 11-36314-E-13 DEREK/LATANYA FISHER
BLG-5 Chad M. Johnson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS' ATTORNEY(S), FEES: $2,146.50, EXPENSES: $87.13
2-11-14 [93]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 14, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is granted. No appearance required.

Bankruptcy Law Group, PC, Counsel for Debtor, seeks additional attorney fees in the amount of $2,146.50 and expenses in the amount of $87.13. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Communication with Clients: Counsel communicated with debtor's regarding status of case and follow-ups (no charge).

2. Case Administration: Counsel communicated with Trustee's office regarding MTV order and review of Notice of Filed Claims (no charge).

3. Motion to Modify: Counsel prepared a motion to modify to reflect change in income and expenses; the motion was denied due to supplemental declaration not being submitted (no charge).

4. Motion to Set Aside Dismissal: Counsel prepared a Motion to Set Aside Dismissal of the Chapter 13 case (no charge).

5. Motion to Modify: Counsel prepared a Motion to Modify due to change in income and expenses, which were unanticipated (4.2 billed hours).

6. Motion to Modify: Counsel prepared a Motion to Modify due to income and expense changes, which were unanticipated (4.1 billed hours).

7. Motion for Fee and Expenses: Counsel prepared this Motion for Fees and Expenses (1.5 billed hours).

Counsel argues that the additional fees sought were beyond the typical fees in a chapter 13 case and the work performed was necessary and provided a benefit to the Debtor.

The hourly rates for the fees billed in this case are $300.00/hour for counsel, $135.00/hour for paralegal, $85.00/hour for administrative staff for a total of 6.4 billable hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $2,146.50 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel also seeks the allowance and recovery of costs and expenses in the amount of $87.13 for postage. The total costs in the amount of $87.13 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Bankruptcy Law Group, PC, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:
>
> Bankruptcy Law Group, PC, Counsel for Debtor
> Applicant's Fees Allowed in the amount of $2,146.50
> Applicants Expenses Allowed in the amount of $87.13.

6.	**10-47321-E-13**	**CLAUDE COLWELL AND**	**MOTION TO APPROVE LOAN**
	JSS-3	**CAROLINA JOHNSON**	**MODIFICATION**
		John S. Sargetis	**2-7-14 [92]**

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

Correct Notice Not 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 February 7, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

Debtors move for an order to approve loan modification with Bank of America, N.A. This motion is denied without prejudice because respondent creditor was not served as required by Federal Rule of Bankruptcy Procedure 7004(h).

Service of process issues

Service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail.

The respondent creditor in this case, Bank of America N.A. is insured by the Federal Deposit Insurance Corporation. Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions applies. The certificate of service for this motion, Dckt. No. 96, does not indicate that service was made to a specific representative or agent for service, or that it was at least addressed to the entity, "Attn: Officer/Agent for Service of Process." Additionally, the proof of service does not state that the Motion was sent to respondent creditor by certified mail. Finally, the pleadings were mailed to a P.O. Box in Los Angeles, California for Bank of America. Service upon a post office box is 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."). The court notes that pleadings were also sent to an address for Bank of America in Simi Valley, California. The court does not recognize this as an address for Bank of America, N.A. as listed by either the FDIC or the California Secretary of State.

On this basis and for the reasons detailed above, the Motion to Approve Loan Modification is denied without prejudice.

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

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

7. 12-35521-E-13 CHRISTOPHER DEAN
PGM-6 Peter G. Macaluso

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH COLLEGE GREENS EAST HOMEOWNER AND EUGENE BURGER MANAGEMENT CORP.
2-10-14 [167]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2014. By the court's calculation, 29 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(3). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to continue the hearing on the Motion to Compromise to April 29, 2014. No appearance at the March 11, 2014 hearing is required.

NOTICE

Debtor brings this Motion to Compromise pursuant to Federal Rule of Bankruptcy Procedure 9014-1(f)(1). However, Federal Rule of Bankruptcy Procedure 2002(a)(3) requires that motions to approve compromises must have twenty-one days notices. With the required 14 day opposition for 9014-1(f)(1) notices, 35 days notice is required. By the court's calculation, 29 days' notice was provided.

OPPOSITION

The Chapter 13 Trustee filed opposition, stating that Debtor is attempting to set plan terms without the proper notice required by Local Bankruptcy Rule 3015-1(d)(1). Trustee requests that the motion be continued to April 29, 2014, to be heard with the Debtor's Motion to Confirm.

The Trustee also notes that the Debtor's Exhibits contain the Stipulation for Dismissal Upon Settlement Provisions and Agreement. The Trustee is concerned with the portion that states Plaintiff agrees to "repay the past debt accruing for the remaining unpaid homeowner's association dues of (insert total)." The Stipulation fails to input a total amount. The Trustee states that it is not clear that the $13.67 stated in the amended plan is sufficient to pay the ongoing HOA monthly an annual dues.

RESPONSE

Debtors agree to a continuance to allow the Motion to be heard with

the confirmation hearing on April 29, 2014. Debtor intends to request an APO payment of $6,000.00 be disbursed by the Trustee to cure pre-petition disputes so that the HOA will reconvey title to the Debtor.

CONTINUANCE

The court continues the hearing on the Motion to Compromise to 3:00 p.m. on April 29, 2014, to be heard in conjunction with the Motion to Confirm 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 Compromise filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Compromise Controversy is continued to 3:00 p.m. on April 29, 2014.

8. 13-30221-E-13 DPC-1 — **MICAELA VAN DINE AND PIOTR REYSNER** — **OBJECTION TO CLAIM OF WYNDHAM RESORTS DEVELOPMENT CORP., CLAIM NUMBER 16-1**
2-11-14 [117]

CASE DISMISSED 9-9-13 AS TO PIOTR REYSNER

CASE DISMISSED 2-20-14 AS TO MICAELA MARIE VAN DINE

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim 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 without prejudice as moot, the case having been dismissed.

9. 14-20725-E-13 FE ARCONADO-HIGNIGHT
DEF-1 David Foyil

MOTION TO VALUE COLLATERAL OF CALIFORNIA COMMUNITY CREDIT UNION
2-11-14 [17]

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, parties requesting special notice, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $8,450.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2006 Nissan Maxima. The Debtor seeks to value the property at a replacement value of $8,450 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on or about September 7, 2010, more than 910 days prior to filing of the petition, with a balance of approximately $9,116. 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 $8,450.00. *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 California Community Credit Union secured by an asset described as a 2006 Nissan Maxima is determined to be a secured claim in the amount of $8,450.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $8,450 and is encumbered by liens securing claims which exceed the value of the asset.

10. 14-20531-E-13 SDB-1 ENRICO/AGNES MORENO W. Scott de Bie MOTION TO VALUE COLLATERAL OF CITIBANK, N.A. 2-11-14 [16]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1740 Keesler Circle, Suisun City, California. The Debtor seeks to value the property at a fair market value of $355,000.00 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 $536,511.03. Creditor Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately $56,356.95. 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 1740 Keesler Circle, Suisun City, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $355,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

11. 14-20032-E-13 KULWINDER SINGH **OBJECTION TO CONFIRMATION OF**
TSB-1 Scott A. CoBen **PLAN BY DAVID P. CUSICK**
2-13-14 [26]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 liquidation analysis. Debtor's plan calls for payments of $295.00 for sixty months and no less than 2% to unsecured debts listed at $49,010.00, which amounts to $980.00 to unsecured claims. Trustee states that more than a year has passed since the transfer of funds to the insider, but California Code Section 3439.09 allows that if this case was converted to a Chapter 7, a Chapter 7 Trustee could reach back four years to avoid the fraudulent transfer to the insider. The Trustee states that the plan will fail liquidation, since the Debtor is proposing to pay only $980.00 to unsecured claims rather than the $42,684.37 that was fraudulently transferred to the insider.

The Trustee also stats that the plan may not have been proposed in good faith. The prior case proposed plan payments of $295.00 for sixty months and no less than 10% to unsecured claims listed at $49,010.00, or $4,910.00. Debtor has now reduced the dividend to unsecured claims to 2% or $980.00. Trustee argues that based on the courts ruling in the prior case, Debtors allowed the case to be dismissed. Debtor then waited the requisite time for the one year period to pass under the Federal Code, and filed the instant case in an attempt to avoid the liquidation issue, and have avoided their obligation to list the transfer to the insider on Statement of Financial Affairs question #3(c), since it occurred more than one year prior

to the filing of this case.

DEBTOR'S OPPOSITION

The Debtor opposes the Trustee's Objection on the basis that the Trustee wrongly presumes that the payment to his companion was a fraudulent conveyance, when the court decided it was a insider preference.

The Debtor also argues that the plan was proposed in good faith. Debtor states the percent to unsecured claims was reduced to two percent out of concern that the Class Two vehicle claim would have been substantially higher in the current case due to late fees and attorney fees. The Debtor also states that since the class two vehicle claim was less than expected, this plan actually pays the unsecured claims $9 more than in the prior case.

DISCUSSION

Here, the court must make a determination of whether the payment to Debtor's companion was a fraudulent conveyance or an insider preference in order to determine whether the proposed plan meets the Chapter 7 Liquidation analysis.

However, the court has no evidence to consider. The Debtor provided a response to the Objection, with no declaration or exhibits attached. Debtors have failed to meet their burden of proving the requirements of confirmation. *See Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence has not been provided and the court must sustain the Trustee's objection.

Additionally, the Trustee's Objection raises a serious good faith issue and whether the Debtor has affirmatively attempted to misuse and abuse the Bankruptcy Code, in violation of his fiduciary duty to the bankruptcy estate in the prior case. Further, it appears that the Trustee has raised the issue whether the transfer was not merely a preference, but a fraudulent conveyance to an insider. FN.1.

FN.1. In reviewing the court's ruling in the prior case, the judge determined that the asserted loan was not documented. Civil Minutes, 13-30204. There are no findings that a fraudulent conveyance did not occur. It appears that the Chapter 13 Trustee in that case was raising the simpler issue for that court, a payment made to an insider for an alleged antecedent debt within one year of the commencement of the bankruptcy case.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the

Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. 09-38433-E-13 GARY/SHERYL RAWLINSON MOTION FOR HARDSHIP DISCHARGE
RLC-1 Stephen M. Reynolds 2-6-14 [93]

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, all creditor, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Debtor Shreyl Brewer, formerly Sheryl Rawlinson, ("Movant") seeks a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtor state that during this case she and co-debtor Gary Rawlinson separated and divorced, with Mr. Rawlinson remarrying. Movant states that she was laid off by her employer on December 31, 2013 as part of a reduction in force. Movant states it is unclear when she will obtain new employment and will not be able to make the plan payments she was making before (half of the plan payment).

TRUSTEE'S OPPOSITION

The Trustee objects to the Debtor's request for hardship discharge on the basis that Debtor may have failed to provide sufficient information to explain why a modification of the plan is not practicable. Trustee states that Debtor has failed to provide a current list of income and expenses and Movant's declaration indicates she is receiving unemployment income. Debtor does not provide any income information from Mr. Rawlinson or a list of expenses for both Debtors.

The Trustee notes that February 2014 is month 54 of a 60 months plan, and the Debtors are current. The plan proposes to pay a 25% dividend to unsecured claims, with the Trustee disbursing just over 85% to the unsecured claims. No secured or priority claim balances remain to be paid.

DISCUSSION

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

The court agrees that Movant has not provided sufficient evidence regarding 11 U.S.C. § 1328(b)(3): modification of the plan is not possible under 11 U.S.C. § 1329. Debtors have not provided current income and expense statements or an analysis of how modifying the plan is not possible at this time.

Based on the foregoing, the motion is denied without prejudice.

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

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

13. 10-34733-E-13 RICKY/DORIS GRAY — MOTION TO SELL
WW-1 Mark A. Wolff — 2-11-14 [45]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2) 21 day notice and L.B.R. 9014-1(f)(1) 14-day opposition filing requirement.)

Tentative Ruling: The Motion to Sell Property has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

The 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 Debtors propose to sell the real property commonly known as 7316 Saltgrass Way, Elk Grove, California. The sales price is $290,000.00 and the named buyer is April Jackson. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 48.

SERVICE

However, Debtors have not provided proper notice on the parties as required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Federal Rule of Bankruptcy Procedure 2002(a)(2) requires 21 days notice and Local Bankruptcy Rule 9014-1(f)(1) requires a 14-day opposition filing requirement. Therefore, 35 days' notice is required. Only 32 days notice was provided.

CHAPTER 13 TRUSTEE'S OPPOSITION

In his opposition, the Chapter 13 Trustee ("Trustee") states that Debtors have not specified where the proceeds are going. Debtors do not claim any exemptions here. According to the Trustee, Debtors are entitled to some proceeds for moving expenses, but the remainder of the net proceeds

should go to the Trustee for the benefit of the unsecured creditors.

DEBTOR'S REPLY

Debtors respond, stating the sale proceeds of $290,000.00 is barely sufficient to pay the first mortgage, second mortgage, real estate agent fees and closing costs. Debtors have provided a breakdown of the proceeds, indicating there will be no net proceeds from the sale to be paid to the Trustee for the benefit of unsecured creditors.

ALTERNATIVE RULING

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to sell property filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Ricky Steven Gray and Doris Louise Gray, the Chapter 13 Debtors ("Debtors"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to April Jackson or nominee ("Buyers"), the residential real property commonly known as 7316 Saltgrass Way, Elk Grove, California("Real Property"), on the following terms:
>
> 1. The Real Property shall be sold to Buyer for $290,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 48.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. The Debtors be and hereby are authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's broker Francine Gregory, F.

Gregory Estates.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

14. 13-36233-E-13 MARK/EVELINA PANANGANAN — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 James L. Bianchi — 2-13-14 [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 February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor is $61.00 delinquent in plan payments. Debtor has paid $0 into the plan to date. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also argues that the plan is not the Debtors' best effort. Debtors propose a plan payment of $61.00 per month for 60 months,

but a review of their tax returns show that Debtors received a tax refund in the amount of $2,333.00 for the 2012 tax year, amounting to an additional $194.42 a month in disposable income.

The Trustee also objects that the plan may not have been filed in good faith. Trustee states that Debtors may have additional disposable income that could be paid into the plan from their tax refund. Trustee also argues that Debtor lists a Capital One Savings Account (mother's retirement money) on Schedule B, which he received a statement for December 2013 to review. Trustee states that there are multiple withdrawals to his mother's retirement accounts in the amount of $150.00, which coincide with deposits from Debtor's employment checks. Trustee also states Debtors paystubs reveal Debtor has a direct deposit of $150.00 into a savings account, which is not noted on Schedule I. Trustee also argues that there does not appear to be a true effort to reorganize.

Additionally, the Trustee argues that the Debtor's plan fails to provide for the debt of Chase on a secured line of credit. Debtor lists this debt as unsecured on Schedule F, and plainly indicates it is a "line of credit secured by residence" (docket #1, page 18). The debt should be listed on Schedule D and provided for in Class 2C of the plan. While treatment of all secured claims may not be required under II U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.

The Trustee also argues that the Debtor cannot make payment under the plan or comply with the plan as the Debtors propose to value the secured claim of Chase on a line of credit, but have failed to file a Motion to Value Secured Claim.

Further, the Trustee states Class 4 of Debtors plan lists a 2004 Toyota Sienna at a payment of $161.00 per month. Schedule D indicates the balance of the loan at $5,280.00. While the Trustee is unaware of the contract interest rate on the debt, the debt may complete in less than 60 months. If the debt will be complete during the term of the plan, it should be provided for in Class 2A.

The Trustee also states the Debtors' plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors non-exempt assets total $3,832.17 and Debtor proposes to pay 0% to unsecured creditors. According to Debtors Schedule C (docket #1, page 15), nonexempt equity of $3,832.17 exists in Debtors Chase Joint Checking account.

Lastly, the Trustee argues that the Debtor may not be able to make the plan payments. First, Debtors' Schedule I (docket #1, page 22) lists on line 13 babysitting income of $706.00 per month. Debtor Evelina Pananganan testified at the First Meeting of Creditors held on February 6, 2014 that this babysitting income is expected to last about two more years, at which time the child will be in school, and the Debtor may seek part time employment. Debtors will not have this income for the duration of the plan.

Second, Trustee states that the Debtors' budget does not appear to be reasonable for the care and maintenance of the Debtors and dependents.

Debtors indicate a household size of five people on Schedule I. Schedule J (docket #1, page 24) indicates non-mortgage expenses totaling $3,298.00, which amounts to $659.60 per person. Line 2 lists utilities of $100.00 and water/sewer of $100.00. Line 4 lists food expenses of $844.00, which amounts to $168.80 per person. Where the net income on line 20c is only $61.00 per month, these expenses appear to be too low to support the Debtors.

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.

15. 13-35337-E-13 JESSICA DYKES — MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria — 1-27-14 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2014. By the court's calculation, 43 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 27, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. 14-21537-E-13 BLG-1 — CATHRYN KINGSBURY — Bruce Charles Dwiggins — MOTION TO EXTEND AUTOMATIC STAY — 2-20-14 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Extend Automatic Stay. Oral argument may be presented by the parties at the scheduled

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 13-20629-A-13) was dismissed on January 8, 2014, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 13-20629-A-13, Dckt. 33, January 8, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor states that she lost her IHSS income for three weeks for one patient and for a month for another patient. This loss of income caused Debtor to fall behind on her plan payments and she was unable to catch up. Debtor states all of her income has returned and she will now be able to maintain her plan payments.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor now asserts that she has sufficient income that will allow her to perform under the new Chapter 13 plan.

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

of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

17. 09-44339-E-13 DPC-1 GLEN PADAYACHEE Peter L. Cianchetta CONTINUED MOTION TO DISMISS CASE 1-8-14 [145]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy 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.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

18. 09-44339-E-13 GLEN PADAYACHEE MOTION TO MODIFY PLAN
PLC-14 Peter L. Cianchetta 1-22-14 [154]

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 22, 2014. By the court's calculation, 48 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 22, 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.

19. 14-20045-E-13 PGM-2 — TUBAYA/DEBORAH CARTER — Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC — 2-10-14 [27]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2014. By the court's calculation, 29 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:

Debtors move for an order to value collateral of Green Tree Servicing, LLC. This motion is denied without prejudice because the correct party is not named in the motion.

Correct party not named in the motion

The court has not been presented with any evidence from the Debtor that a loan servicing company, such as Green Tree Servicing, LLC, is actually the creditor having a claim in this case. A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment. . . ."

Green Tree Servicing, LLC, has appeared in numerous other cases and has confirmed that it si not a creditor, but merely a loan servicer for the actual creditor. Further, Green Tree Servicing, LLC has also affirmed that it is not the agent for service of process or the authorized agent under a power of attorney to litigate the legal rights of such creditors for which it provides loan servicing services.

The Motion alleges that Green Tree Loan Servicing, LLC holds a second deed of trust which secures a claim in this case. No evidence has been presented to show that Green Tree Loan Servicing, LLC made a loan,

recorded the deed of trust, is the owner or holder of the note upon which the claim is based, or that Green Tree Loan Servicing, LLC is the creditor with a claim in this case. Rather, it appears that Green Tree Loan Servicing, LLC is merely a loan servicer and the court is being asked to value an illusory claim for a third-party is not a creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine that this loan servicing company is a creditor in this case. Declaration, Dckt. 29. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Green Tree Servicing, LLC.

Proof of Claim No. 7 filed in this case on January 24, 2014, (which was two weeks before the present Motion was filed) lists Bank of America, N.A. as the creditor having a secured claim in this case. For the court to grant the relief as requested would result the court entering an order which likely be ineffective (or require extensive litigation as to why Bank of America, N.A. to an order in which it was not named and not served).

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value Collateral is denied without prejudice.

20. 14-20045-E-13 TUBAYA/DEBORAH CARTER — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Peter G. Macaluso — 2-13-14 [33]

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 February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to value Collateral of Green Tree Servicing, LLC. The court having denied this motion without prejudice, the objection is sustained.

The Trustee also objects that the Debtors have failed to pay the installment of $70.00 by February 3, 2014. It appears an installment payment was made on February 20, 2014.

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.

21.	**11-23451-E-13 CJO-1**	**CLARENCE ISADORE AND DEATRA JONES-ISADORE Peter G. Macaluso**	**MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT 2-25-14 [73]**

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, Debtors' Attorney, and Chapter 13 Trustee on February 25, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to 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:

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

JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly principal and interest mortgage payment to $1,296.70, with a total monthly payment (including escrow costs) of $1,559.27. The Loan Modification Agreement, a copy of which was filed in support of the Motion

as Exhibit "1"), Dckt. No. 76, provides for a capitalization of arrears into the modified new principal balance and lowers the interest rate, resulting in a lower monthly payment amount. An amount of $109,300.00 of the new principal balance is eligible for forgiveness. The interest rate for the loan will be 3.903% in years 1-5, and 4.500$ for years 6-23.

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 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 the Debtors and JPMorgan Chase, N.A., are authorized to amend the terms of the loan with Debtors Clarence Junior Isadore and Deatra Lynn Jones-Isadore, which is secured by the real property commonly known as 200 Home Acres Avenue, Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 76, in support of the Motion.

22. 14-20056-E-13 THOMAS/SUSAN CLAYTON **MOTION TO VALUE COLLATERAL OF**
PGM-1 Peter G. Macaluso **SANTANDER CONSUMER USA**
2-10-14 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2014. By the court's calculation, 29 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 $6,521.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Motion does not describe the secured property that Debtor seeks to be valued. Dckt. No. 14. According to the Declaration of Debtors Thomas and Susan Clayton, however, Debtors are the owner of a 2007 Honda Accord. The Debtors seek to value the property at a replacement value of $6,521.00 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 2007, more than 910 days prior to filing of the petition, with a balance of approximately $9,907.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $6,521.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA secured by an asset described as a 2007 Honda Accord is determined to be a secured claim in the amount of $6,521.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $9,907 and is encumbered by liens securing claims which exceed the value of the asset.

23. 14-20056-E-13 PGM-2 | **THOMAS/SUSAN CLAYTON** | **Peter G. Macaluso** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE** | **2-10-14 [19]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2014. By the court's calculation, 29 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:

Debtors move for an order to value the secured claim of the Internal Revenue Service. The Internal Revenue Service, however, was not served in accordance to the procedures required by Federal Rule of Bankruptcy Procedure 2002-1.

SERVICE OF PROCESS ISSUES

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

(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:

Centralized Insolvency Operations
PO BOX 7346
Philadelphia, PA 19101-7317

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate. FN.1.

FN.1. Attorneys with the Department of Justice have stated on multiple occasions at educational conferences that if the service requirements are not complied with to the letter, the United States takes the position that it has not been effectively served and the purported orders are not binding on it.

REVIEW OF THE MOTION

Additionally, the court notes that the Motion to Value the Secured Claim of the Internal Revenue Service does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The Motion suffers from the same defects as Debtors' Motion to Value the Secured Claim of the Franchise Tax Board, PGM-3.

The Motion merely states that the Debtors are the owners of some various "personal property," without describing the items of personal property in which the Internal Revenue Service has a security interest.

This is not sufficient. The Debtors' Declaration instructs the court to "refer to the Declaration of Debtor" filed with the Motion, but it is not the responsibility of the court to sift through Debtors' pleadings to ascertain the collateral to be valued. From a review of the motion, the court can only ascertain that the Debtors own some personal property, which they seek to value at $2,671.07 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 have not, however, described the assets with any specificity and the court cannot determine the exact value of the property and Internal Revenue Service's security interest.

Moreover, Debtors' prayer for relief requests that the court issue an order valuing the claim of the Internal Revenue Service at $2,700. Motion to Value the Secured Claim, Dckt. No. 19. No explanation is provided for why the Debtors are seeking the value the claim at this amount, when Debtors have represented that the value of the personal property is $2,671.07. Motion, Dckt. No. 19, and Declaration of Thomas Clayton and Susan Clayton, Dckt. No. 21.

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

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

24. 14-20056-E-13 THOMAS/SUSAN CLAYTON **MOTION TO VALUE COLLATERAL OF**
PGM-3 Peter G. Macaluso **FRANCHISE TAX BOARD**
2-10-14 [25]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 10, 2014. By the court's calculation, 29 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). 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.

The court's tentative decision is to deny the Motion to Value the Secured Claim of the Franchise Tax Board 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 Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Debtors seek an order by the court to value the collateral securing Debtor's indebtedness to the Franchise Tax Board.

B. The Franchise Tax Board has a lien on "personal property."

C. Against Debtors' "personal property" is a lien with the Franchise Tax Board in the amount of $5,407.46, pursuant to the claim filed with the Court on January 30, 2014. The lien was originally recorded on May 27, 2010.

D. The debtor values their personal property at $2,671.07. Declaration of Thomas and Susan Clayton, Dckt. No. 27.

E. The Internal Revenue Service holds a senior lien which exceeds the value of the Debtor's personal property.

F. Debtors assert that there is insufficient equity to secure the lien of the Franchise Tax Board.

The Motion to Value the Secured Claim of the Franchise Tax Board does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

The Motion merely states that the Debtors are the owners of some various "personal property," without defining the exact items of personal property in which the Franchise Tax Board has a security interest. This is not sufficient. The Debtors' Declaration instructs the court to "refer to the Declaration of Debtor" filed with the Motion, but it is not the responsibility of the court to sift through Debtors' pleadings to ascertain the collateral to be valued. From a review of the motion, the court can only ascertain that the Debtors own some personal property, which they seek to value at $2,671.07 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 have not, however, described the assets with any specificity and the court cannot determine the exact value of the Franchise's Tax Board's security interest.

Additionally, Debtors state that the Internal Revenue Service holds a "senior lien" on the personal property which exceeds the value of the collateral. Debtors do not list the value of the superior lien on their Motion or Declaration. The court cannot determine whether the claim of the Franchise Tax Board is truly under-collateralized, and should be determined to be in the amount of $0.00 pursuant to 11 U.S.C. § 506(a). Without understanding the nature of the subject property, and the value of the lien of the Internal Revenue Service, the court also cannot determine whether there is insufficient equity to secure the repayment of the claim of the Franchise Tax Board.

Debtors also state that the Franchise Tax Board has a secured lien against Debtors' personal property in the amount of $5,407.46 (¶ 2 of the Motion, Dckt. No. 25), but Debtors' Schedule D, filed on January 3, 2014, Dckt. No. 1, lists the value of the claim of the Franchise Tax Board as $8,068.00. No explanation has been given for this discrepancy.

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."

The Motion does not describe the relief sought, and the grounds upon which this relief is based, in accordance with the requirements of Federal Rule of Bankruptcy Procedure 9013. The court cannot ascertain the collateral to be valued, and does not have sufficient information to value the security interest of the respondent creditor, the Franchise Tax Board. Thus, this Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value the Secured Claim of the Franchise Tax Board is denied without prejudice.

25. 14-20056-E-13 TSB-1 | **THOMAS/SUSAN CLAYTON** | **Peter G. Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **2-13-14 [30]**

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 February 13, 2014. By the court's calculation, 21 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 did not appear at the First Meeting of Creditors held pursuant to 11 U.S.C. § 341, held on February 6, 2014. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to March 6, 2014 at 10:30 am.

2. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value the Secured Claim of Santander Consumer USA on a 2007 Honda, and the secured liens of Internal Revenue Service and the Franchise Tax Board, which are all set for hearing on the same date as this objection.

3. Although the court is granting the Motion to Value the Secured Claim of Santander Consumer, USA, PGM-1 on this date, the court is also denying the Motions to Value the Secured Claim of the Franchise Tax

Board, PGM-3, and to Value the Secured Claim of the Internal Revenue Service, PGM-2. Thus, Debtors' plan does not have sufficient monies to pay all claims in full.

4. The Debtors have not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). On or about January 14, 2014, the Trustee received paystubs for Debtor Thomas Clayton, dated June 8, 2013 through November 9, 2013, and for Susan Clayton dated from May 19, 2013 through December 7, 2013. Trustee has requested the most recent 60 days of paystubs prior to the filing, that is from November 23, 2013 to December 31, 2013 for Thomas Clayton; and from December 8, 2013 to December 31, 2013 for Susan Clayton. To date, Trustee has not received these documents.

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.

26. 14-20057-E-13 SJS-1 | DORIS SAUNDERS Scott J. Sagaria | MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE 2-6-14 [17]

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, parties requesting special notice, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 33 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 $1,762.35. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Suzuki SX4. The Debtor seeks to value the property at a replacement value of $1,762.35 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 June 30, 2008, more than 910 days prior to filing of the petition, with a balance of approximately $3,581.25. 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 $1,762.35. *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 American Credit Acceptance secured by an asset described as a 2008 Suzuki SX4 is determined to be a secured claim in the amount of $1,762.35, 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 $1,762.35 and is encumbered by liens securing claims which exceed the value of the asset.

27. 14-20057-E-13 TSB-1 — DORIS SAUNDERS — Scott J. Sagaria — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-13-14 [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 February 13, 2014. By the court's calculation, 26 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 March 11, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), as Debtor's plan relies on the Motion to Value the Secured Claim of American Card Acceptance on a 2008 Suzuki, which is set for hearing on the same date of this objection.

The court is granting Debtor's Motion to Value the Secured Claim of American Credit Acceptance, SJS-1. The court determined that the secured claim is in the amount of $1,762.35. The Trustee's objection having been resolved, the objection is overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on January 3, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 14-20159-E-13 RHM-1 | **ROSIE MOORE** / **Robert Hale McConnell** | **MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCIAL SERVICES** **2-5-14 [16]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 34 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). 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 Motion to Value Collateral is granted and the secured claim of American Honda Finance Corporation is determined to be in the amount of $14,000.00, pursuant to the Stipulation of the parties. No appearance at the March 11, 2014 hearing is required.

Debtor moves for an order valuing the secured claim of American Honda Financial Services. The Debtor is the owner of a 2010 Honda Accord. The Debtor in her Declaration states that she values the property at a

replacement value of $11,950.00 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 May 29, 2010, more than 910 days prior to filing of the petition. Debtor does, however, provide the value of the remaining balance on the respondent creditor's claim in the Motion or Declaration. The court cannot determine whether the respondent creditor's claim secured by a lien on the asset's title is under-collateralized, and will not grant the valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

Additionally, the Motion does not identify the real creditor in interest, and Debtor does not present any evidence from the Debtor that American Honda Financial Services, a loan servicing company, is the real creditor in interest. Debtor does not produce evidence showing that American Honda Financial Services ever made the loan, recorded a deed of trust, or is the holder of the note upon which the claim is based. The Debtor does not testify that she borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to American Honda Financial Services. Declaration, Dckt. 32.

A creditor is defined by 11 U.S.C. § 101(1)(A) to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5)(A) to be a "right to payment..." The Motion alleged that American Honda Financial Services holds a purchase money interest which secures a claim in this case. In its claim, American Honda Financial Services acknowledged that it is creditor's authorized agent. Claim No. 2. It is not the agent for service of process or the authorized agent under a power of attorney to litigate the legal rights of such creditors for which it provides loan servicing services. This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions, and for which there is a colorable basis for issuing an order which affects the rights of the party. Declaration, Dckt. 32.

OPPOSITION OF CREDITOR

On February 14, 2014, the American Honda Finance Corporation filed an opposition to the Motion, identifying itself as the creditor on the subject claim. The American Honda Finance Corporation offered its own valuation of the subject vehicle, a 2010 Honda Accord, as the fair retail purchase price of $14,411.00. This conflicts with Debtors' assertion that the "trade-in" price of the vehicle is $11,950.00.

The Declaration of Debtor states, however, that Debtor is valuing the vehicle at $11,950.00, and that Debtor's opinion of the trade in value of the vehicle is $7,610.00. Declaration of Rosie Lee Moore, Dckt. No. 18.

STIPULATION

On February 28, 2014, American Honda Finance Corporation and Debtor entered into a stipulation to resolve certain issues in this matter. Dckt. No. 40. The stipulation provides, in material part, that:

1. American Honda Finance Corporation is the legal owner of the automobile known as 2010 Honda Accord.

2. For the purposes of Debtor's Motion to Value the Secured Claim of American Honda Finance Corporation, and the Debtor's Chapter 13 Plan, that the value of the subject vehicle is set and established at $14,000.00, as American Honda Finance Corporation's secured claim payable under Class 2(B)(1) of the Debtor's Plan.

3. If necessary, Debtor shall incorporate the terms of this stipulation into the order confirming the Chapter 13 Plan. Additionally, the Chapter 13 Plan and other documentation relating to the subject vehicle be superseded, amended, and/or interdelineated as necessary the Debtor to reflect the terms of the stipulation.

Debtor and American Honda Finance Corporation did not appear to stipulate to the withdrawal or dismissal of this Motion, or provide for the scheduled hearing on this Motion to be removed from the court's calendar. Thus, the court will render its ruling on the amount of the subject claim based on the stipulation filed by the parties.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value the Secured Claim is granted, and the claim of the American Honda Finance Corporation secured by an asset described as a 2010 Honda Accord LX, is determined to be a secured claim in the amount of $14,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $14,000.00 and is encumbered by liens securing claims which exceed the value of the asset

29. 14-20159-E-13 TSB-1 ROSIE MOORE Robert Hale McConnell OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-13-14 [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 February 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's Plan relies on the Motion to Value the Secured Claim of American Honda Financial Services on a 2010 Accord, which is set for hearing on the same date as this Objection. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

Although the Motion to Value the Secured Claim, RHM-1, was granted by the court pursuant to a stipulation entered into between the Debtor and creditor, the parties agreed to value the secured claim of the American Honda Finance Corporation at $14,000.00. Dckt. No. 40. This differs from the value listed for the secured claim in Debtor's Chapter 13 Plan. The claim is categorized as a Class 2 Claim, and the value of American Honda Financial Corporation's interest in the collateral is listed as $11,950.00--the amount that Debtor originally claimed was the value of the subject vehicle in her Motion to Value the Secured Claim. RHM-1.

Debtor's plan, which proposes a monthly dividend of $214.73 for the claim for the plan duration of 43 months, does not pay the claim of American Honda Finance Corporation in full. Dckt. No. 5. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

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

30. 14-20159-E-13 VVF-1 | **ROSIE MOORE** **Robert Hale McConnell** | **OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE CORPORATION** **2-13-14 [25]**

Final Ruling: The Objecting Creditor, American Honda Finance Corporation, and Debtor, Rosie Moore, having executed and filed a stipulation that deems the matter resolved and provides for the removal of the scheduled hearing of this Objection, Dckt. No. 38, withdraws the Objection to Confirmation 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 was dismissed without prejudice, and the matter is removed from the calendar.**

31. 10-26265-E-13 WSS-2 | **PABLO/ROBIN PADILLA** | **W. Steven Shumway** | **CONTINUED MOTION TO APPROVE LOAN MODIFICATION** | **1-7-14 [30]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Approve the Loan Modification is xxxxx. 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 Debtors have filed the present Motion to approve a Loan Modification Agreement. In the Agreement IndyMac Mortgage Services agrees to a loan modification which will reduce the Debtor's monthly mortgage payment which includes principal, interest, taxes and insurance payment from the current $2,471.82 to $2,051.13 per month. The IndyMac Mortgage Services will capitalize the delinquency, and add it to the existing principal balance of the loan. Lender will fix the interest rate on the loan at 2.00% for the next 5 years, then 3.00% for year six, 4.00% for year seven and 4.25% for the remaining term of the loan.

This modification will allow Debtors to propose a plan that will pay a dividend to unsecured creditors. Debtors will also file Amended Schedules I and J in connection with the motion, in order to amend Debtors' plan after this modification is approved.

UNIDENTIFIABLE PARTY TO THE CONTRACT

Though the Debtors want to enter into a Loan Modification Agreement with some entity named IndyMac Mortgage Services, the court cannot identify this entity as a creditor, (11 U.S.C. § 101(10), having a claim to modify in this case. In reviewing the Loan Modification Agreement, IndyMac Mortgage Services, is stated,

A. The "Lender" or "Servicer," and then given the defined term title of "Lender."

B. Various powers and authorities are given to "Lender." It appears that these power and authorities are given only to "Lender" personally and not to the actual, undisclosed creditor.

C. IndyMac Mortgage Services executes this Agreement in its personal, individual capacity, with no disclosure of any agency capacity or authority.

Loan Modification Agreement, Dckt. 33.

The Official Registry of Claims in this case lists only one secured claim, that filed by OneWest Bank, FSB. Proof of Claim No. 3. That proof of claim is in the amount of $64,932.98, however, on the Proof of Claim form does not identify the property which secures the claim. (Required information for Question 4. The court acknowledges that salted through the attachment are references to an address in Roseville, California which may indicate the property OneWest Bank, FSB believes secures the claim.) Attached to the Proof of Claim is a Note in which INDYMAC BANK, FSB is identified as the "Lender," the person to whom the borrower promises to pay the obligation thereunder. The Note states that it is secured by a Deed of Trust.

A Deed of Trust (Secondary Lien) is also attached to the Proof of Claim. INDYMAC BANK, FSB is identified as the "Lender." The Deed of Trust cross references the Note identified above. Though long and dense, the court has attempted to read the document to see if there is an IndyMac Mortgage Services referenced therein. None has been identified.

The court reviewed the California Secretary's of State website and could not identify any entity named IndyMac Mortgage Services registered to do business in California. http://kepler.sos.ca.gov/.

The court is troubled by having a services company appearing to be the party contracting with this consumer debtor to modify the loan. If OneWest Bank, FSB is the creditor, then it should clearly state so in its Modification Agreement. If IndyMac Mortgage Services is an authorized agent, then OneWest Bank, FSB should be clearly shown as the party in the contract and IndyMac Mortgage Services execute the contract for OneWest Bank, FSB. A least sophisticated consumer debtor should not be presented with a "pick a name, any name" situation in which a name other than his or her creditor is placed on a purported loan modification.

If IndyMac Mortgage Services is merely a fictitious name by which OneWest Bank, FSB is doing business, the court cannot see the reason for having that fictitious name placed in the Loan Modification Agreement. One would question whether it is being done for an improper purpose, such as to confuse least sophisticated consumers into later being duped into believing that they did not have an effective modification with the BANK. FN.1.

FN.1. If a fictitious name is being used by the actual creditor, implications arise under the Federal Fair Debt Collection Practices Act. See 15 U.S.C. § 1692a, "Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph [exclusion for the original creditor],

the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."

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

ORDER TO APPEAR

On February 19, 2014, the court issued an order for a senior representative of OneWest Bank, FSB, with personal knowledge of the Bank's claim in this case to attend the continued hearing on this Motion to Approve the Loan Modification, scheduled for 3:00 pm on March 11, 2014. Dckt. No. 38. It was further ordered that on or before March 4, 2014, OneWest Bank, FSB file and serve the on the Debtors, Debtors' Counsel, the Chapter 13 Trustee, and the United States Trustee the following:

A. A statement whether it is the creditor asserting the claim being modified by the proposed agreement, and if not, the identify of such creditor, if known.

B. If the event that OneWest Bank, FSB identifies itself as the creditor whose claim is being modified;

   1. Why the Loan Modification Agreement does not identify OneWest Bank, FSB as the "Lender" whose claim is being modified;

   2. Why OneWest Bank, FSB is not named as a party to the Loan Modification Agreement;

   3. The identify of IndyMac Mortgage Services and how it is authorized to do business in the State of California;

   4. Properly authenticated documents by which IndyMac Mortgage Services is authorized to execute the Loan Modification Agreement in its name and not for OneWest Bank, FSB, as its authorized agent.

   5. The bona fide business reasons for having the Loan Modification Agreement not identifying OneWest Bank, FSB as agreeing to the loan modification and having the Loan Modification Agreement on its face be limited as an agreement only between IndyMac Mortgage Services and the consumer Debtors.

Service of the order, however, was returned for one law firm. The Order to Appear attendant Certificate of Service, reflects that copies of the Order to Appear were sent for informational purposes for attorneys who have appeared for OneWest Bank, FSB in other unrelated matters. Dckt. No. 38. One of the addresses listed was for the Newport Beach based firm of

Burnett & Matthews LLP, located at "4675 MacArthur Court, Suite 1450 Newport Beach, CA 92660."

The docket reflects that the envelope addressed to Burnett & Matthews LLP, containing the Order to Appear, was returned to the court as undeliverable. A search for the firm on the California State Bar website does not produce any additional or alternative addresses for the firm. Moreover, it does not appear that the firm has handled other cases or parties in the Eastern District of California in the last six months.

MARCH 11, 2014 HEARING

At the hearing, XXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve the Loan Modification is xxxxxxxxxxxx.

32. 10-50165-E-13 DONALD/LUCILE STEWART MOTION TO MODIFY PLAN
RHM-4 Robert Hale McConnell 1-21-14 [72]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and all creditors on January 21, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the plan on the following grounds:

1. According to the Trustee's calculations, the plan will complete in more than the 60 months proposed, possibly taking 67 months or more. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee's calculations are based upon Debtors commencing the plan payments effective on March 25, 2014. The proposed plan states in Section 6, the Additional provisions, that payments of $341.00 shall commence upon confirmation of the plan, but does not specify a date or the number of payments to be made at $341.00 per month. According to the Trustee's calculations, the plan will take an additional 28 months to complete, once plan payments resume. Debtors will have completed 39 months of their plan as of February, 2014. Additionally, the Trustee notes that the Debtors are attempting to authorize a plan term of up to 66 months in Section 6.02.

2. The Plan that was filed on December 30, 2013, Dckt. No. 69, was not properly served on creditors. The Plan was served as an exhibit, Dckt. No. 75, which is missing page 7 of 7, which covers the Additional Provisions of the Plan which are in the Plan filed as Dckt. No. 69.

3. The plan is not be Debtors' best efforts under 11 U.S.C. § 1325(b), or in the alternative, has not been proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's current Schedule J reflects a monthly net income of negative $2,788.13. Debtors reported a combined monthly income of $1,610.87, which is solely the spousal income according to Schedule I. Dckt. No. 75. Box 13 is checked on the form, indicating that Debtors do not expect an increase or decrease in income within the year after filing the form. The declaration filed by Debtors states that Joint Debtor Donald Stewart has a worker's compensation hearing scheduled for February, 14, 2014, in which a $1,010.50 weekly benefit is being requested. Dckt. No. 74.

4. The Motion and Declaration state that Debtors have paid $29,820.00 to the Trustee, which is incorrect. Debtors have paid a total of $45,440.00 to the Trustee, with the last payments posted on August 29, 2013.

5. Payments made by the Trustee to unsecured creditors are not authorized. The Debtors are proposing a 0% payment to unsecured creditors in Section 2.14. Trustee has disbursed $733.95 to unsecured creditors under the plan confirmed on April 9, 2011.

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.

33. 13-29769-E-13 JOHN JAMES MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 1-28-14 [69]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Confirm the Amended Plan. No appearance at the March 11, 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 confirmation of the plan on the following grounds:

1. Debtor is above median income and proposes a 60 month plan paying $900.00 per month, with a dividend of 0% to unsecured claims. Debtor deducts $120.00 per month on Schedule J for life insurance; however, no life insurance polices are reported on Schedule B. It appears that this is not an expense, and $120.00 per month should be added to the plan payment.

2. On Schedule J, and Amended Schedule J, Debtor deducts $500.00 for a tax offset from the IRS. In his Declaration, the Debtor indicates that this amount is necessary to avoid future liabilities. Currently Debtor should have 7 months of $500 set aside for his 2013 tax liability. Where Debtor has incurred an unpair 2013 tax liability, Debtor has not proven that he will set aside the monies and thus be able to afford the plan payment under 11 U.S.C. § 1325(a)(5). The Plan does not provide for the reporting of the liability, so that Trustee can make certain that these monies are set aside. Debtor could have proposed to, for instance, make quarterly reports of the balance in the account by supplying bank statements to Trustee, along with copies of his state and federal tax returns for each year.

   Further, Debtor claims the tax withholding is for a 2013 tax liability, and not for future tax liability; the Trustee questions

the need for withholding beyond payment of the 2013 liability, payable by April, 2014. Trustee states that these concerns were raised in Trustee's previous opposition to the Motion to Confirm, filed on December 3, 2013, Dckt. No. 51.

3. Debtor may not be able to make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor fails to list Complaint No. #08-66930, filed with the Labor Commissioner by former employee Ronald Bennefield, on the Statement of Financial Affairs #3. Dckt. No. 38. Nor does Debtor list Ronald Bennefield on Schedule F. Debtor also does not disclose a potential claim against Victoria Castaneda on Schedule B, nor does Debtor list his claim, #13SC03813 filed in Sacramento County, on the Statement of Affairs #4. Trustee is unable to determine whether Debtor can make plan payments due to the outstanding lawsuits and claims that are not disclosed in this case.

REPLY OF DEBTOR

Debtor responds by acknowledging that the Plan is not "proper for confirmation" at this time. Debtor states that he will set, serve, and file a third amended plan soon. Dckt. No. 80.

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.

34. 13-33583-E-13 SUE MARIANO **MOTION TO CONFIRM PLAN**
Charnel J. James **1-23-14 [47]**

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 the Chapter 13 Trustee, and all creditors on January 23, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes confirmation of the plan on the basis that the plan fails the Chapter 7 Liquidation Analysis, and because it appears that Debtor cannot make the plan payments.

First, the Trustee argues that the Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4); Debtor's non-exempt assets total $49,625.00 on her Amended Schedule C, which was filed on December 20, 2013. Schedule A, filed on November 11, 2013, lists real property with a value of $91,838.00 and a secured debt on Schedule D of $84,202.00, or $7,636.00 in equity with no claim of exemption. Debtor's non-exempt assets total $57,261.00. Debtor is proposing a 10% dividend to unsecured creditors, which total $2,510.00.

Debtor has claimed exemptions under California Civil Code of Procedure § 703.140(b), and appears married, but separated based on Schedule I (although the spouse has not joined in the petition). California Civil Code of Procedure § 703.140(b) requires a Spousal Waiver, signed by the Debtor and Debtor's spouse, for use of the claimed exemptions. Trustee has not found any such waiver filed with the court after review of the record. The Trustee's Objection Exemptions, NLE-1, was heard and sustained on this basis on February 11, 2014.

Second, it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's projected disposable income on Schedule J reflects $390.12 and Debtor is proposing plan payments of $1,064,45,

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.

35. 13-33583-E-13 KSW-1 — SUE MARIANO — Charnel J. James — OBJECTION TO CONFIRMATION OF PLAN BY SETERUS, INC. — 2-3-14 [55]

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, the Chapter 13 Trustee, and the Office of the United States Trustee on February 3, 2014. By the court's calculation, 36 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:

Seterus, Inc., which is the authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), creditor c/o Seterus, Inc."

("Creditor"), opposes confirmation of the Plan on the basis that the Debtor's Plan does not properly classify its claim.

On or about September 25, 2033, Debtor executed and delivered to Lender Full Spectrum Lending, Inc. ("Lender"), a Deed of Trust granting Lender a security interest in the real property located at 52 La Cresenta Drive, Oroville, California. The Lender's beneficial interest in the Deed of Trust was subsequently sold, assigned and transferred to the objecting Creditor, Seterus, Inc. Corporation Assignment of Deed of Trust, Exhibit Nos. 3 and 4, Dckt. No. 58.

The Debtor has scheduled the objecting Creditor's claim as Class 4, intending to make the ongoing monthly payments directly. However, the Creditor filed Proof of Claim No. 3 on January 22, 2014, which reflects that there are arrears on the claim in the amount of $34.10. The Claim form indicates that the amount owed the secured claim is $83,802.41, with an arrearage of $34.10. Creditor asserts that on the basis of the arrearage, the claim should be classified as a Class 1 defaulted secured claim, whereby the arrears and ongoing payments would come from the Trustee.

The Plan does not propose to cure these pre-petition arrearage on Creditor's claim. Class 4 is only for claims that are current (i.e., no arrears/default) and are to be paid outside of the plan, by the Debtors a third person directly. Class 1 is for defaulted secured claims. It appears that Debtor is delinquent on the loan of the creditor, and that regular payments under the loan agreement must be paid by the Trustee. 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 arrearages, the plan cannot be 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 a 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.

36. 10-36985-E-13 DANIEL/KRISTINA BROWN MOTION TO MODIFY PLAN
WW-4 Mark A. Wolff 1-23-14 [64]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and all creditors, on January 23, 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. The Chapter 13 Trustee opposes confirmation of Debtors' Plan on the basis that the feasibility of the plan is dependent on the Motion to Authorize the Loan Modification, WW-5, set for this hearing date. According to Trustee's calculations, if the Motion to Authorize the Loan Modification is denied, the plan will be overextended and will complete in 17 months, as opposed to 60 months as proposed.

The court's decision is to deny the Debtors' Motion to Approve the Loan Modification, WW-5. Thus, Trustee's Objection is not resolved. 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. 10-36985-E-13 WW-5 | **DANIEL/KRISTINA BROWN** | **Mark A. Wolff** | **MOTION TO APPROVE LOAN MODIFICATION** | **1-23-14 [70]**

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 and all creditors on January 23, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

Debtors seek an order authorizing them to enter into a Loan Modification with Green Tree Servicing, LLC. At the time that this case was filed, Debtors owned real property located at 10145 Saintsbury Court, Elk Grove, California. The property is encumbered by a first deed of trust from BAC Home Loans Servicing, which Debtors state is now being serviced by Green Tree Servicing, LLC. Debtor's Third Modified Plan continues to treat Green Tree Servicing as a Class 1 Creditor. The value of Debtors' residence at the time this case was filed was $240,000.00. The amount owed to BAC Home Loans Servicing was $303,779.00 at the time this case was filed.

Debtors state that they have been working with Green Tree for the purpose of modifying their loan, and completed a trial period plan to qualify for a permanent modification. Debtors attach Exhibit A, a copy of the Loan Modification Agreement, to this Motion. Dckt. No. 73. The Motion states that Green Tree Servicing, LLC, has proposed a loan modification with the following terms: (a.) a new principal balance of $299,552.68; (b.) a commitment term of 480 months; (c.) monthly principal and interest payments

of $1,251.95; (d.) a monthly payment of $1,488.03, which factors in escrow; (e.) an interest rate of 4.0000%.

Debtors request that the court enter authorizing a loan modification agreement with Green Tree Servicing, LLC. Debtors have filed Supplemental Schedules I and J to show current income and expenses. The loan modification capitalizes the pre-petition and post-petition arrears. Debtors are preparing a Third Modified Plan to change the treatment of the arrears, and they are filing a Motion to Confirm the Third Modified Plan, WW-4, concurrently with this motion.

UNIDENTIFIED LENDER

The court has not been presented with any evidence from the Debtor that a loan servicing company, such as Green Tree Servicing, LLC, is actually the creditor having a claim in this case. A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment. . . ."

A review of the Loan Modification (attached as Exhibit A) shows that Debtors name Green Tree Servicing, LLC as the "Lender" on the loan to be modified. It is unclear, however, whether Green Tree Servicing, LLC, is the actual lender in this case. On March 15, 2011, Green Tree Servicing, LLC filed Proof of Claim No. 6 for $12,000, the basis for which was indicated as "money loaned." Claim No. 6.

On the face of the Claim form, however, "Bac Home Loans Servicing" is identified as the name of the creditor, and the Proof of Claim appears to have been filed by the attorney for Debtors, Mark A. Wolff. The form is signed by Mark A. Wolff, and dated March 5, 2011. To add to the confusion, Debtors' confirmed plan lists Bac Home Servicing as a Class 1 Creditor, and describes the collateral as Debtor's property located at 10145 Saintbury Court, Elk Grove, California. Dckt. No. 51. The Loan Modification Agreement, however, identifies Green Tree Servicing, LLC as the Lender in this matter. Exhibit A, Dckt. No. 73 at 2.

A Notice of Transfer of Claim was filed on Dckt. No. 61, showing that Proof of Claim No. 6, in the amount of $12,000, was being transferred from Bac Home Loans Servicing to Green Tree Servicing, LLC. This Notice, which was signed and dated on August 30, 2013, does not set the parameters of authority for what Green Tree Servicing, LLC, can and cannot do within the circumstances of servicing Debtors' loan. Dckt. No. 61. It is unclear whether the undisclosed creditor has merely delegated its existing authority to Bac Home Loans Servicing and Green Tree Servicing, both loan servicing companies, to act for the 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. There has been no evidence showing that the actual creditor delegated whatever unidentified authority to Green Tree Servicing, LLC, (pursuant to, for instance, a master servicing agreement) to enforce the creditors' rights as a holder of a secured claim, collect monthly principal

and interest, and escrow payments from a borrower, or modify the rights of a creditor under a loan agreement. Cal. Civ. Code § 2349(4). FN.1.

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.

Green Tree Servicing, LLC, has appeared in numerous other cases and has confirmed that it is not a creditor, but merely a loan servicer for the actual creditor. Green Tree Servicing, LLC has also affirmed that it is not the agent for service of process or the authorized agent under a power of attorney to litigate the legal rights of such creditors for which it provides loan servicing services.

The Motion alleges that Green Tree Loan Servicing, LLC holds a second deed of trust which secures a claim in this case. No evidence has been presented to show that Green Tree Loan Servicing, LLC made a loan, recorded the deed of trust, is the owner or holder of the note upon which the claim is based, or that Green Tree Loan Servicing, LLC is the creditor with a claim in this case. Rather, it appears that Green Tree Loan Servicing, LLC is merely a loan servicer and the court is being asked to value an illusory claim for a third-party is not a creditor.

This court has made it clear that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine that this loan servicing company is a creditor in this case. Declaration, Dckt. 29. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Green Tree Servicing, LLC.

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 will not speculate and hope that it has named a real creditor and that its order will have any legal effect. 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 to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. 11-46286-E-13 MARSHALL/GALE MORAN MOTION TO SELL
SLH-5 Seth L. Hanson 2-7-14 [76]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2014. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. This requirement was not met.

Tentative Ruling: The Motion to Sell Property was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(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 deny the Motion to Permit Debtor 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 2124 Butterfield Lane, Lincoln, California. The sales price is $301,000 and the named buyer is Aldea Homes, Inc. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 79.

The sales proceeds will be divided as follows: $274,911.79 to Wells Fargo on the first deed of trust, and $0.00 to Wells Fargo on the second deed of trust in full satisfaction of each of their secured loans. These

funds will be paid simultaneously with the transfer of title or possession to the buyer. All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds by the title company handling the transaction. There will be no note carried back and the entire purchase price will be paid at the closing. Debtors will not relinquish title to or possession of the subject property prior to payment in full of the purchase price. Furthermore, Debtors assert that the sale is an arms-length transaction, and that the buyer Aldea Homes, Inc. is not a party in interest in the bankruptcy proceeding, and has no relation to the Debtors.

The Chapter 13 Trustee filed a limited objection to the Motion to Sell, stating that Debtor scheduled the first deed of trust to be paid as surrender. According to the Trustee, Wells Fargo holds a second deed of trust in the amount of $57,407.89 as an unsecured claim. An order valuing the claim at $0.00 was entered on March 2, 2012. Civil Minutes, Dckt. No. 33. The Trustee is to pay Wells Fargo no less than 36% under the plan. Dckt. No. 41. The Trustee does not oppose this motion unless it purports to alter this term.

INSUFFICIENT NOTICE PERIOD

Federal Rule of Bankruptcy Procedure 6004 requires that notices of proposed sales, use, or leases of property, other than cash collateral, not in the ordinary course of business be given pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(2), (c)(1), (i), and (k). Federal Rule of Bankruptcy Procedure 2002(a)(2) mandates that twenty-one days' notice be provided to parties in interest for motions proposing the sale of property.

Local Bankruptcy Rule 9014-1(f)(1), however, also requires that moving party setting motions for hearing under this rule provide at least fourteen days, preceding the date of the hearing, for potential respondents to file and serve written opposition to the motion. The bankruptcy courts of the Eastern District of California require that the moving party provide fourteen (14) days to permit that written opposition to be filed and served in advance of the hearing (pursuant to Local Bankruptcy Rule 9014-1(f)(1)), **in addition** to the twenty-one (21) days' notice of hearing mandated and opportunity to present an opposition (under Federal Rule of Bankruptcy Procedure 2002(a)(2)). Thus, Motions to Sell Property in this district must be filed and served at least **thirty-five (35) days** prior to the hearing date.

Here, Debtors filed and served the Motion to Sell on February 7, 2014, only 32 days before this hearing date. Debtors set the motion for hearing under Local Bankruptcy Rule 9014-1(f)(1). Because Debtors have not provided sufficient notice for potential respondents to file written opposition to the motion under Local Bankruptcy Rule 9014-1(f)(1), this motion is denied without prejudice.

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 Real Property is denied without prejudice.

39. 10-48887-E-13 RAC-4 — BARBARA OLSON — Richard A. Chan — CONTINUED MOTION TO APPROVE LOAN MODIFICATION — 1-13-14 [77]

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 13, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Approve the Loan Modification. No appearance at the March 11, 2014 hearing is required.

CASE BACKGROUND

Review of Motion

This matter was continued from February 11, 2014. Debtor seeks court approval for permission to modify her existing home loan with Wells Fargo Home Mortgage ("Wells Fargo"). Debtor states that Wells Fargo Home, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment. The loan is secured by Well's Fargo security interest in Debtor's real property, commonly known as 1717 Fontenay Way, Roseville, California.

Debtor's Motion describes the agreement as compromised of the following terms; the interest bearing principal will be in the amount of $316,594.89. The interest rate of the modified loan will be 4.00% and the

modified payment of principal and interest will be $1,323.17. The estimated modified payment amount including taxes and insurance will be $1,708.53 for the duration of the loan. ¶ 4, Motion to Approve Loan Modification, Dckt. No. 77.

The court noted that the motion did not initially comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B). Debtor did not attach a copy of their post-petition credit agreement to the motion. Federal Rule of Bankruptcy Procedure 4001(c) requires that a motion for authority to obtain credit shall summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor instead offered "Exhibit 'A' - Copy of Loan Modification Terms," on their Exhibit Cover Sheet. Dckt. No. 80. This document appears to be the first page of a letter, addressed to Debtor, from Wells Fargo. It is unclear who drafted the letter, as only the first page is provided. The author acknowledges receiving consent from Debtor's Attorney's office to discuss workout options with the Debtor, and extends an offer to Debtor for a proposed modification, with a chart that outlines the current and proposed modified terms of Debtor's home loan. Exhibit A, Copy of Loan Modification Terms, Dckt. No. 80. The offer appears to be a proposal for a loan modification with Wells Fargo. The court stated that it was uncertain whether this constitutes a trial loan modification, in which Debtor would make trial payments to obtain a permanent modification, or a permanent modification. Debtor's Declaration merely rehashed the terms outlined in Wells Fargo's Letter. Declaration of Debtor in Support of Motion for Permission to Modify Home Loan, Dckt. No. 79.

According to the "Copy of Loan Modification Terms," the modification proposed by Wells Fargo would modify the current unpaid principal balance, from $294,383.02 to $316,594.89. The interest rate would be modified to 4.00%, and the post modification principal and interest payment would be in the amount of $1,323.17. The estimated modified payment amount would be $1,706.53. Exhibit A, Copy of Loan Modification Terms, Dckt. No. 80 at 2. The "Copy of Loan Modification Terms" instructs Debtor's Attorney to review the proposal with Debtor and to then file a petition with this court to obtain approval to modify the first mortgage.

The court noted that this copy of Wells Fargo's letter, charting out the current and proposed modified terms of Debtor's loan, does not qualify as a credit agreement that meets the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B). Debtor only characterized the agreement as a proposed loan modification, and did not explain whether the proposed agreement is only for a trial loan modification in which the borrower Debtor must submit all trial payments and remain eligible for loan modification, before Debtor can actually receive a permanent loan modification.

Unidentifiable Creditor to the Loan Modification

The court also noted that the Motion seeks to have the court approve an undisclosed contract with an entity identified as "Wells Fargo Home Mortgage." The California Secretary of State reports that an entity named "Wells Fargo Home Mortgage, Inc." was merged out and is no longer registered to do business in California. http://kepler.sos.ca.gov/. It further discloses that an entity named as "Wells Fargo Home Mortgage of Hawaii, LLC" cancelled its registration in California. A limited liability company named Wells Fargo Home Mortgage, LLC is listed as having a current registration in California.

The Motion did not identify which, if any, of these entities is the one with whom the Debtor wants to enter into a Loan Modification. In providing the court with only an excerpt of the November 15, 2013 Loan Modification Proposal, Exhibit A, the court cannot tell if a subsequent page identifies the creditor with whom the Debtor wants to contract. The Certificate of Service for this Motion lists Wells Fargo Bank, N.A. being provided service, however, no entity named Wells Fargo Home Mortgage is served. Dckt. 81.

The court notes that while the banner in the upper right hand corner consists of two boxes, one of which includes the words "Wells Fargo" and the other "Home Mortgage." While the scanned image is of rough quality, it appears that the two boxes are of different color. It does not appear that these words form one name consisting of "Wells Fargo Home Mortgage." From similar documents presented to the court in other cases, the second or last page of this letter usually contains a footer saying that the letter is from Wells Fargo Bank, N.A., and that "Wells Fargo Home Mortgage" is a division within Wells Fargo Bank, N.A.

No Proof of Claim has been filed by "Wells Fargo Home Mortgage." Proof of Claim No. 12 has been filed by Wells Fargo Bank, N.A., for a secured claim in the amount of $293,385.53. The name "Wells Fargo Home Mortgage" is not part of Proof of Claim No. 12. It may well be that this is the debt which the Debtor seeks to modify and Wells Fargo Bank, N.A. is the creditor with whom the Debtor will contract. Presumably the actual Loan Modification Agreement identifies the creditor who has the claim for which the rights will be modified.

Copy of the Loan Modification Agreement

On February 24, 2012, the Debtor filed with the court, a copy of the subject Loan Modification Agreement. Dckt. No. 85. Page 1 of the Loan Modification Agreement identifies the Lender of the loan on the property commonly known as 1717 Fontenay Way, Roseville, California, as Wells Fargo Bank, N.A. Dckt. No 85 at 2. Although not yet signed by the Lender, the signature section of the Loan Modification Agreement contains and endorsement line for Wells Fargo Bank, N.A. Dckt. No. 85 at 7.

The court considers the copy of the actual Loan Modification Agreement, filed as Exhibit "C" on the Docket as Docket No. 85, as sufficiently identifying Wells Fargo N.A., as the actual Lender and party to the Loan Modification Agreement. The court grants the Motion to Approve the Loan Modification on the basis that Debtor is now in compliance with Federal

Rule of Bankruptcy Procedure 4001(c), and has identified the real lender in interest.

The court shall issue a minute order 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 Debtor Barbara R. Olson is authorized to amend the terms of her loan with Wells Fargo, N.A., which is secured by the real property commonly known as 1717 Fontenay Way, Roseville, California, and such other terms as stated in the Modification Agreement filed as Exhibit "C," Docket Entry No. 85, in support of the Motion.

40. 11-26797-E-13 RUDOLPH/MARY TAMAYO MOTION TO MODIFY PLAN
RIN-5 Michael Rinne 1-31-14 [84]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2014. By the court's calculation, 39 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 30, 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. 14-21391-E-13 TERRY CONANT — MOTION TO EXTEND AUTOMATIC STAY
Pro Se — O.S.T.
2-28-14 [14]

Notice Provided: The Order Setting Hearing on Motion to Extend Automatic Stay was served by the Clerk of the Court through the Bankruptcy Noticing Center on the Debtor (pro se), Chapter 13 Trustee, and the Office of the United States Trustee, on March 4, 2014. 7 days notice of the hearing was provided.

No Tentative Ruling.

Debtor filed a "Motion to Keep Automatic Stay" on February 28, 2014, which consisted of a handwritten letter asking the court to "keep the automatic stay in place until matter can be heard in front of Judge Ronald H. Sargis." Dckt. 14. A Notice of Motion was filed on February 28, 2014, attempting to set the Motion for hearing. Dckt. 16. However, no proof of service was filed indicating which parties (if any) were served with the Motion. The court issued an Order Granting Motion to Shorten Time and Order Setting Hearing on Motion to Keep Automatic Stay on March 4, 2014.

Further, Debtor has failed to provide any information to the court regarding the status of the automatic stay or why it should be extended. A review of the court's system reveals the following previous bankruptcy cases:

09-32756	Discharge received on October 5, 2009
12-25594	Dismissed 4-9-12 for failure to file documents
12-29733	Closed; Discharge denied September 24, 2012
12-36770	Dismissed January 9, 2013 for failure to file a plan, motion to confirm the plan and all necessary related motions (motions to value, motions to avoid liens)
13-24962	Dismissed July 3, 2013 for ineligibility
14-21391	Current Case

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 13-24962) was dismissed on July 3, 2013, after Debtor failed to prosecute the case. *See* Order, Bankr. E.D. Cal. No. 13-24962, Dckt. 60, July 3, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

OPPOSITION FILED BY WELLS FARGO BANK, N.A.

Wells Fargo Bank, N.A. filed an opposition to the Motion to Extend the Automatic Stay. The opposition addresses the four prior cases filed by the Debtor. The Bank also brings to the court’s attention adversary proceedings, discussed below, commenced by the Debtor against Wells Fargo Bank, N.A. Based on the totality of the facts and circumstances, Wells Fargo Bank, N.A. asserts that the Debtor has not, and cannot, rebut the presumption of bad faith arising from the multiple filings and dismissals of prior bankruptcy cases.

DISCUSSION

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

In considering good faith in the context of prosecuting a Chapter 13 Plan, 11 U.S.C. § 1325(a)(3), the determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

Here, Debtor does not provide any evidence that the case was filed in good faith or how this plan will be successful after several failed bankruptcies. A review of the previous bankruptcy cases reveal no attempt from the Debtor to properly prosecute a Chapter 13 plan. Furthermore, a review of the plan filed in this case shows Debtor does not intend to be reorganizing or rehabilitating his finances through a Chapter 13 plan. The Chapter 13 Plan filed in this case is essentially an empty shell, with "Wells Fargo" listed in Class 1 with a payment of $1,500.00 per month. Plan, Dckt. 13. In fact, "Wells Fargo" appears to be the only creditor listed.

A review of the prior cases reveal that Wells Fargo Bank, N.A. asserts a claim secured by the real property commonly known as 2191 Lindenwood Drive, South Lake Tahoe, California, Debtor's residence. Debtor

filed a adversary proceeding in Case No. 12-29733 against Wells Fargo Bank, N.A. for illegal foreclosure. Bankr. E.D. Cal. Adv. No. 12-02279, Dckt. 1. The court dismissed the complaint. Dckt. 29. That Complaint asserts various claims, including (1) the grant deed is moot, (2) RESPA, TILA, and HOEPA claims, (3) the Note has not been notarized, (4) the Deed of Trust is not properly notarized, (5) the Assignment of the Deed of Trust is moot, (6) the Reconveyance is moot, (7) the Second Assignment of a Deed of Trust is moot, (8) the Third Assignment of a Deed of Trust is moot, (9) the Fourth Assignment of a Deed of Trust is moot, (10) the Fifth Assignment of a Deed of Trust is moot, (11) the Substitution of Trustee is moot, (12) the Third Deed of Trust is moot, (13) the Notice of Default and Election to Sell is moot, (14) the Notice of Trustee's Sale is moot, (15) First Cause of Action for Fraud, (16) Second Cause of Action for Intentional Misrepresentation, (17) Third Cause of Action for Negligent Misrepresentation, (18) Fourth Cause of Action for Injunctive Relief, (19) Fifth Cause of Action for Unfair Competition, and (20) Sixth Cause of Action for Breach of Contract.

From the face of the proposed Chapter 13 Plan, this bankruptcy filing has little with seeking a reorganization or rehabilitation of the Debtor's finances, but is merely an adjunct to asserting substantive claims against Wells Fargo Bank, N.A. The Statement of Financial Affairs answers every question "None" except,

> Question 1, in which the Debtor states he is self employed and has income (for an unspecified year) of $120,000.
>
> Question 3.a., that payments of an unspecified amount were made at an unspecified time to "Wells Fargo."

Dckt. 11.

On Schedule I the Debtor states that he is self-employed and has income of $10,000.00 a month. *Id.* He then reduces this to $7,000.00 a month "take-home pay," without specifying any deductions. *Id.* The Debtor then lists ($24,120.00) a month in expenses, which includes ($2,500.00) a month for his mortgage. From a review of the Opposition and the Complaint in the prior Adversary Proceeding, it does not appear that the Debtor is actually paying $2,500.00 a month to Wells Fargo Bank, N.A. (the only creditor identified on Schedule D with a secured claim, *Id.*). After allowing for all of the other expenses, the Debtor reports having $5,380.00 a month to fund a plan. (The $2,880.00 of Monthly Net Income on Schedule J, plus the $2,500.00 mortgage payment amount. *Id.*) However, the proposed Chapter 13 Plan only provides for $1,500.00 a month to repay a $96,756.00 arrearage for "Wells Fargo" (with the additional provisions stating that no payment will be made until the Bankruptcy Judge "has proper title and standing"). Dckt. 13.

The $1,500.00 a month plan payment is not sufficient to pay just the principal amount of the arrearage over the 60 months of the plan ($1,612.60 required), but does not provide for the current monthly payment or the Chapter 13 Trustee administrative expense.

Though this court has recognized that Chapter 11, 12, or 13 debtors might use the automatic stay in lieu of an injunction issued by a state

court judge, district court judge, or bankruptcy judge, something more than a "only after it is determined whether this bank is actually a creditor will I start paying the debt" is required to prosecute a bankruptcy case in good faith. This court has required debtors to provide a self funding bond, paid monthly in the full amount of the mortgage payment and the arrearage payment. See *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011). Otherwise, the debtor is free to seek the appropriate injunctive relief from the court in which the law suit with the asserted creditor is pending. A bankruptcy case is not merely a free injunction in which there is no attempt for a good faith reorganization.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.