UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

April 8, 2014 at 2:00 p.m.

1.	14-20406-C-13 TSB-1	KAREN WHIGHAM Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-13-14 [23]

CASE DISMISSED 3/20/14

Final Ruling: The case having previously been dismissed on March 20, 2014, the Objection is sustained as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,,
>
> **IT IS ORDERED** that the Objection is sustained as moot.

2. 14-20008-C-13 TISHA KRAMER — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
TSB-2 Scott J. Sagaria
3-4-14 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 4, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. No appearance required. The court makes the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to exemptions claimed by the Debtor under C.C.C.P. §§ 703.140(b)(2), (3), (4), & (5). Debtor reports on Amended Scheduled of Financial Affairs (Dkt. 20) that she resided in Joppa, Maryland until March 15, 2012. Based on this information, Debtor is not entitled to the California Exemptions as she has not resided in California for more than 730 days. 11 U.S.C. § 522(a)(3)(A).

Discussion

11 U.S.C. § 522(a)(3)(A) provides that an individual debtor may exempt

> any property that is exempt under . . . state or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for at least 730 days immediately preceding the date of the filing of the petition . . ..

Here, Debtor has only resided in California for approximately 377 days; therefore, the 730-day residency requirement was not met and Debtor cannot take advantage of California's exemption scheme. Based on Debtor's representation that she had been residing in Maryland since 1995, she can claim exemptions in accordance with Maryland law. Section 522(a)(3) continues on and provides that:

> if the debtor's domicile has not been located [in] a single state for such 730-day period, [the applicable exemption is that of] the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place . . ..

Essentially, as long as Debtor resided in Maryland for the greater part of 180 days before the 730-day period before the filing of the petition, she would be entitled to use the exemptions allowed in Maryland.

However, it is clear that Debtor does not qualify for the California exemptions. The objection is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemptions filed by the trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Debtor's Claim of Exemptions is sustained.

3. 13-34010-C-13 JOHN/TANYA MANNIX — MOTION TO VALUE COLLATERAL OF
MAC-4 Marc A. Caraska — BANK OF AMERICA, NA
Thru #4 — 3-3-14 [56]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 3, 2014. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3688 Trefethen Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $175,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $182,658.91. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $81,803. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3688 Trefethen Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $175,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. 13-34010-C-13 JOHN/TANYA MANNIX MOTION TO CONFIRM PLAN
MAC-5 Marc A. Caraska 3-3-14 [60]

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 March 3, 2014. By the court's calculation, 36 days' notice was provided. 42 days' notice is required.

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

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

Green Tree Servicing, LLC and the Chapter 13 Trustee filed objections to Debtors' plan.

Green Tree Servicing LLC Opposition

Green Tree objects to the plan based on the following:

1. Green Tree Servicing LLC is the holder of the first deed of trust recorded against Debtors' property located at 3688 Trefethen Way, Sacramento. The amount due on the Note is $179,220.57 and the pre-petition arrearage owed is $1,180.71.
2. Debtors' plan does not provide for the curing of the pre-petition arrearage owed to Green Tree Servicing LLC and the claim should be provided for in Class 1 of the plan.
3. Debtors' plan mis-classifies Green Tree's claim and does not provide for the curing of the pre-petition arrearage and should not be confirmed. 11 U.S.C. § 1322(b)(5).

Chapter 13 Trustee Opposition

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

1. The Motion to Confirm was filed with insufficient notice under Local Bankr. R. 3015-1(d)(1).
2. The Certificate of Service does not provide that the amended plan was served on the appropriate parties.
3. Debtors' plan may not be their best efforts under 11 U.S.C. § 1325(b). Debtors have not properly completed Form B22C and Trustee objects to deductions on the form based on

> information provided by Debtors in schedules. Trustee believes that line #59 should be positive at least $991.99. Debtors plan proposes payments of $532.53 for 60 months, with a 6% dividend to unsecured creditors, totaling $7,751.05. Based on Trustee's calculations, unsecured creditors should received $59,519.40.

Discussion

Local Bankruptcy Rule 3015-1(d)(1) concerns modified plans proposed prior to confirmation. Here, Debtors are seeking confirmation of a second amended plan proposed prior to confirmation. LBR 3015-1(d)(1) provides:

> If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall filed and service the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-(f)(1) requires twenty-eight days' notice of the hearing and notice that opposition must be filed fourteen days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two days prior to the hearing.

The result of LBR 3015-1(d)(1) is that a Motion to Confirm a plan proposed prior to confirmation must be served on forty-two (42) days' notice. Debtors served parties-in-interest on March 3, 2014 and the hearing date is April 8, 2014. Debtors gave 36 days' of notice, which is insufficient under LBR 3015-1(c)(1). The lack of notice is sufficient grounds for the court to deny the motion without prejudice.

Debtors' misclassification of Green Tree Servicing LLC's arrearage claim, lack of proof of service of the amended plan, and wrongfully completed Form B22C serve as additional grounds for non-compliance with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

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

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

5. 11-48511-C-13 DAVID/LISA STOREY MOTION TO MODIFY PLAN
BSJ-3 Brandon Scott Johnston 2-14-14 [62]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on February 14, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 13-33312-C-13 ROBERT/CHRISTINA QUINLAN — CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Peter G. Macaluso — 12-4-13 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on November 21, 2013. 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 opposed confirmation of the Plan because Debtors filed amended Schedules I & J on November 20, 2013, adding a new employer for Mr. Quinlan and new income information. This resulted in a net increase of income in $1,591.22 per month.

The following changes were made to Schedule J:

Food	$297.00 increase
Clothing	$25.00 increase
Laundry	$5.00 increase
Medical/Dentals	$623.00 increase
Transportation	$350.00 increase
Recreation	$71.00 increase
Auto Insurance	$78.00 increase
Personal Care	$97.00 added expense

The Trustee recognized that expenses increased based on Mr. Quinlan's new employments; however, it was unclear to Trustee why Debtors' monthly net income increased by only $65.22 compared with the combined

monthly income on Schedule I of $1,591.22.

Prior Hearing

At the second hearing on February 4, 2014, the court continued the matter for sixty (60) days for Debtor to present Trustee with pay stubs verifying Mr. Quinlan's employment.

Debtors' Response filed 03/25/14 (Dkt. 30)

Debtor Mr. Quinlan's new job is in medical sales. In the Declaration of Robert Quinlan (Dkt. 31), he states that the bonus structure of his work included a large territory, including Monterrey, Fresno, all of Northern California and Nevada. The bonus that comes with the larger territory includes a gas allowance of $750; however, total gas expense is $1,500.00. Therefore, Debtors increased to $750.00 the expense associated with Mr. Quinlan's new job.

Debtors' state that they have provided Trustee with the recent pay checks, which reflect the medical and dental insurance, quarterly bonus, and an increased plan payment to $329.00 per month.

Discussion

Debtor provided the court with Amended Schedules I & J on March 27, 2014. The Amended Schedules and Debtors' Declaration clarify the work expense increase and reconcile Trustee's concerns regarding medical expenses.

The court remains unable to confirm Debtors' plan; however, because of continuing unexplained changes in income and expenses. Amended Schedule I reflects unexplained decrease in non-filing spouse's income by $475.00 per month. Previously filed Schedule I (Dkt. 20) lists non-filing spouse's monthly gross income of $2,650.00, while Amended Schedule I (Dkt. 33) lists it at $2,175.00. Debtors do not address this unexplained drop in income.

In the Declaration of Robert Quinlan, Mr. Quinlan states that the bonus that comes with his job includes $750 for gasoline expenses. However, Amended Schedule I includes the "Bonus" on line 8h at $540.00. The court is unclear as to where this figure came from and where the $750 is included in Debtors' income.

The court lacks sufficient evidence concerning Debtors' income and expenses to determine whether the plan is feasible and represents Debtors' best efforts. The Trustee permitted this second continuance to allow Debtors to supplement the record; however, the supplemental filings compounded the court's confusion. 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.

7. 14-21113-C-13 RODERICK/ZAKIA CARTY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Candace Y. Brooks — 3-13-14 [25]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on March 13, 2014. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors improperly classify the secured claim of Toyota Financial Services in Class 4 of the plan. The creditor's claim indicates the loan was initiated on September 5, 2010 and that maturity date is December 5, 2016. The debt should be paid through Class 2 based on the plan language, as it is set to complete in 36 months.

Debtors' Response

Debtors filed a First Amended Plan and Motion to Confirm Debtors' First Amended Plan on March 18, 2014.

The filing of a new plan is a *de facto* withdrawal of the pending plan. The Objection shall be overruled as moot. The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled as moot.

8. 14-20414-C-13 JANAYE WHIGHAM
TSB-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-13-14 [22]

CASE DISMISSED 3/20/14

Final Ruling: The case having previously been dismissed on March 20, 2014, the Objection is sustained as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained as moot.

9. 14-20814-C-13 MARY ROSENBERG
SS-1 Scott D. Shumaker

MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC
3-11-14 [23]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 11, 2014. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2216 Summerfield Lane, Plumas Lake, California. The Debtor seeks to value the property at a fair market value of $142,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Pursuant to Proof of Claim 3, Green Tree Servicing, LLC is the authorized agent for lender The Bank of New York Mellon Trust Company, N.A., as Trustee for Home Equity Loan Pass-Through Certificates, Series 2006-HSA1.

The first deed of trust secures a loan with a balance of approximately $190,540.00. Green Tree Servicing, LLC's second deed of trust secures a loan with a balance of approximately $62,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Green Tree Servicing, LLC as authorized agent for New York Mellon Trust Company, N.A., as Trustee for Home Equity Loan Pass-Through Certificates, Series 2006-HSA1, secured by a second deed of trust recorded against the real property commonly known as 2216 Summerfield Lane, Plumas Lake, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $142,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

10. 14-20830-C-13 DIANA OREHEK
TSB-1 James L. Brunello

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-13-14 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on March 13, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor's plan may not pass the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's Schedule A lists three real properties located at 2774 Kaweah Court, Cameron Park, California; 2780 Kaweah Court, Cameron Park, California; and 3358 Bow Mar, Cameron Park, California. Schedule A indicates Debtor has no equity in the properties and includes the fair market value less 8% "costs of sale" and "tax consequences."

   Schedule A provides the following:

	Fair Mkt. Value	**8% Cost of Sale**	**"Tax Consequences"**	**Net Value**
2774 Kaweah Court	$190,240	$15,219	$12,513	$162,508
2780 Kaweah Court	$150,526	$12,042	$9,382	$129,102
3358 Bow Mar	$155,344	$12,427	$24,493	$118,424

   The "Tax Consequences" are inconsistent. Debtor provided Trustee with capital gains information for each of the properties. For 2780 Kaweah Court, the potential capital gain is $27,353, which makes the tax consequence on this property roughly 35%. For 3358 Bow Mar, the potential capital gain is

$93,880, making the tax consequence on this property roughly 26%. Finally, for 2774 Kaweah Court, the potential capital gain is $131,185, making the tax consequence roughly 10%. The Trustee is uncertain whether the values of the properties are accurately calculated since the tax consequences differ so drastically in percentage.

The values referenced on Debtor's Schedule A match the values on documents received from Debtor's Accountant, dated October 15, 203. The Trustee is not certain that Debtor provided their opinion of value as to the properties listed on Schedule A, or if some third party value has been listed without providing how this value was determined, or if the source of the value is qualified to provide such values.

Trustee is further concerned that the value are out of date. The Petition was filed January 30, 2014; however, the values are dated October 15, 2013, based on the documents Trustee received from Debtor's Accountant. 11 U.S.C. § 1325(a)(4) requires value to be as of the effective date of the plan.

Debtor's Response

Debtor opposes the Trustee's Objection for no specific reason and requests a briefing schedule be set.

Discussion

Debtor provides no explanation to assuage the Trustee's and court's concerns regarding the Chapter 7 liquidation analysis, tax consequence inconsistences, and date of valuation for the subject properties.

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

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

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

11. 13-34036-C-13 DAVID/ELENA BERNARDINO — MOTION TO VALUE COLLATERAL OF PNC BANK
PLG-1 Chelsea A. Ryan — 3-5-14 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7756 Antelope Road, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of $165,250 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 $220,000. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $87,990. 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 PNC Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 7756 Antelope Road, Citrus Heights, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $220,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

12. 14-21136-C-13 JOSE/ELIZABETH JACOB — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
BMV-1 Bert M. Vega — 2-20-14 [19]

CASE DISMISSED 3/24/14

Final Ruling: The case having previously been dismissed on March 24, 2014, the Motion is denied as moot.

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

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

13. 14-20943-C-13 ROBERT CAESAR
RI-1
Thru #14

MOTION TO VALUE COLLATERAL OF GMAC/OCWEN LOAN SERVICING LLC
3-4-14 [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, and Office of the United States Trustee on March 4, 2014. 28 days' notice is required. That requirement was met.

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

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

Debtor seeks to value the collateral of "GMAC/Ocwen Loan Servicing LLC;" however, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. A search of the FDIC website and the California Secretary of State Business Search reveals no entity doing business as "GMAC/Ocwen Loan Servicing LLC." The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true 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 Debtor provides no evidence for the court to determine who the proper creditor is on this loan. The Debtor does not testify that she borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from GMAC to Ocwen Loan Servicing or vis-a-versa. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

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

IT IS ORDERED that the Motion is denied without prejudice.

14. 14-20943-C-13 ROBERT CAESAR — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Rebecca E. Ihejirika — 3-13-14 [24]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on December 11, 2013. 14 days' notice is required. That requirement was met.

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

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

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

1. The plan relies on the pending Motion to Value the secured claim of GMAC/Ocwen Loan Servicing, which is set for hearing on April 8, 2014. If the court does not grant the motion, Debtor cannot afford plan payments. 11 U.S.C. § 1325(a)(6).

2. Debtor's plan does not reflect his best efforts under 11 U.S.C. § 1325(b). Debtor's Schedule J lists support of $300.00 per month on line 14. Debtor testified at the First Meeting of Creditors that this is for child support and he will be paying this amount for approximately two more years. Debtor's plan payment does not increase when the support ends. Debtor should contribute this disposable income into his plan for the benefit of unsecured creditors.

Debtor's Response

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

1. It is highly likely that the Motion to Value the secured claim of GMAC/Ocwen Loan Servicing will be granted.

2. Debtor filed an amended Form B22C that corrects an error in the originally filed Form B22C. Line 16b in the initial form was incorrect beause it stated Debtor's household size as (1) one instead of (2) two, as Debtor stated in his Schedule I. Debtor is below median income for a household of two (2) persons.

3. The $300.00 child support payment will terminate in June 2016. Debtor proposes that the plan be confirmed with an Order Confirming the Plan provided a modification that the Plan Payment shall be $521.01 for Months 1-29 and increase to $821.01 for months 30 through 60.

The court's decision to sustain the objection and deny confirmation. Debtor's Motion to Value the secured claim of GMAC/Ocwen Loan Servicing was denied at the hearing on April 8, 2014. Debtor cannot make the payments as proposed. Debtor can propose a modified plan and incorporate the relevant payment increase proposed in the reply to Trustee's Objection.

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. 12-40948-C-13 STEVEN/GINA SERIO — MOTION TO CONFIRM PLAN
WSS-2 W. Steven Shumway — 2-25-14 [54]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2014. By the court's calculation, 37 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on February 25, 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. 14-20452-C-13 DAVID/NANCY VENABLE — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Lucas B. Garcia — 3-13-14 [20]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on March 13, 2014. By the court's calculation, 18 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 may not be bale to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Plan calls for the first and second mortgages to Cal Vet to be paid directly by Debtors as Class 4 debts. Dckt. No. 10. Debtors' Schedule J fails to list a contract payment for either mortgage. Net income on line 23c is $362.44. Debtors cannot make the mortgage payments based on the net income shown on that Schedule. Debtors testified at the First Meeting of Creditors held on March 6, 2014, that they have listed the property for a short sale and if it sells, they will be renting. The Debtors' budget does not list any rent expense.

2. Debtor's Plan does not provide for the secured claim of Wyndham Resort Development Corp on a timeshare. The creditor filed a secured claim, Court Claim No. 1, for $3,968.47. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtor wishes to conceal the proposed treatment of a creditor.

3. Section 2.06 of the plan indicates that Debtors Counsel will file and serve a motion for attorney fees. Section 6.01 indicates in paragraph three that Trustee shall distribute $73.00 monthly to

supplement the attorney retainer. This provision appears inappropriate where the attorney opts out of the no-look fees.

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.

17. 13-33953-C-13 PAUL/ANGELA JIMENEZ — CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
SCG-1 Sally C. Gonzales — 11-18-13 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 18, 2013. 28 days' notice is required. That requirement was met.

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

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

The court continued the hearing on this matter from March 25, 2014.

Prior Hearing

On December 17, 2013, the court heard the Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. The motion was accompanied by the Debtor's declaration. Debtors own the subject real property commonly known as 7324 Candlelight Way, Citrus Heights, California. Debtors sought to value the property at a fair market value of $120,000.00 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).

Creditor contested Debtors' opinion of value and the court granted a continuance to March 25, 2014, for submission of supplemental evidence.

Supplemental Evidence, filed 02/14/14 (Dkt. 41)

Creditor presents the court with the appraisal of Jared Micket, from Los Angeles Valuation Group, Inc. (Dkt. 41). The appraisal values the subject property at $140,000.00.

Discussion

Creditor has not provided admissible evidence for the court to consider. Creditor submitted an unauthenticated appraisal. *See* Fed. R. Evid. 901. The appraisal not having been property authenticated and no testimony having been provided by the person purporting to have an opinion as to

value, the court does not have competing evidence to consider the value of the subject property.

The court continued the hearing on this matter from March 25, 2014. Nothing further has been filed on the docket. The court will proceed to consider the admissible evidence provided.

The first deed of trust on the subject property secures a loan with a balance of approximately $130,218.00. Creditor JPMorgan Chase's second deed of trust secures a loan with a balance of approximately $44,092.00. Therefore, based on the evidence presented, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value Collateral, filed pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against real property commonly known as 7324 Candlelight Way, Citrus Heights, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the property is $120,000.00 and is encumbered by senior liens securing claims which exceed the value of the property.

18. 13-35864-C-13 CHARLES BEYER
UND-3 Ulric N. Duverney

MOTION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE FOR THE DEBTOR
3-25-14 [78]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Office of the United States Trustee on March 25, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for the Appointment of a Guardian Ad Litem has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(2), and Federal Rule of Bankruptcy Procedure 2002(b). 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 deny the Motion for the Appointment of Personal Representative for Debtor. 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 an order appointing Debtor's wife a Personal Representative/ Next Friend for Debtor, pursuant to Federal Rule of Bankruptcy Procedure 1004.1. Debtor makes this motion on the grounds that Debtor is incapacitated as he is afflicted with dementia. Debtor states that he is not capable of pursuing this Chapter 13 without the assistance of a personal representative.

BACKGROUND

On December 19, 2013, Deborah Allen ("Allen") filed a Chapter 13 on behalf of her husband, Debtor Charles Beyer ("Beyer"), as his "next friend."

In 2007, Beyer took out a reverse mortgage and pledged the family residence as collateral. Before it was placed in the family trust, the property was held as Beyer's separate property. The reverse mortgage required the borrower to maintain insurance on the property and pay the real estate taxes. Beyer breached the agreement by not paying the property taxes, and at times allowed the property insurance to lapse. The reverse mortgage company (Financial Freedom, a division of OneWest Bank, FSB) deemed the non-payment to be a default of the reverse mortgage contract and began foreclosure proceedings. A trustee's sale was scheduled to take place on December 20, 2013.

The Motion states that due to his mental illness, Beyer is unable to prosecute this matter on his own. Beyer's wife, Allen, testifies in her declaration that her husband is afflicted with dementia, and due to his condition, Beyer cannot drive and requires assistance in getting dressed, taking his medication, attending his doctor's appointments, and undertaking normal day-to-day activities. ¶ 2, Declaration of Deborah Allen in Support of Appointment of Guardian Ad Litem, Dckt. 24 at 2. Allen states that Beyer has extremely short term memory, and has become extremely paranoid, and that his condition has deteriorated significantly. *Id.* at 2-3. She further states that because of his dementia, Beyer would not understand these bankruptcy proceedings or their significance. *Id.*

Movant requests that the court take judicial notice of the Declaration of Reinhardtz Hilzinger, M.D., filed with this court on February 18, 2014. Hilzinger attests that the Debtor, Beyer, is one of his patients, and that he is a physician duly licensed to practice medicine in the state of California. Hilzinger states that it is his opinion that as a result of his dementia, Beyer is incapable of realizing and making rational decisions with respect to his financial responsibilities, and that he will need the assistance of someone in managing his financial affairs. ¶ 4, Declaration Regarding Capacity, Dckt. No. 80.

Federal Rule of Evidence 201 provides when judicial notice may be taken by a federal court,

> Rule 201. Judicial Notice of Adjudicative Facts
>
> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
> (1) is generally known within the trial court's territorial jurisdiction; or
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (c) Taking Notice. The court:
> (1) may take judicial notice on its own; or
> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
>
> (d) Timing. The court may take judicial notice at any stage of the proceeding.
>
> (e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
>
> (f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Hilzinger's Declaration does not contain facts that would be generally known within the court's jurisdiction, and with contentions that can be accurately or readily determined from sources whose accuracy cannot be questioned. The court denies Movant's request for judicial notice of the contents of the Declaration Regarding Capacity. The court will, however, consider Hilzinger's Declaration as an opinion of Beyer's capacity, mental condition,, and state of compromised decision-making.

HEARING ON MOTION TO APPOINT GUARDIAN AD LITEM

Upon a review of the docket, the court notes that Movant had previously filed a similar Motion for the Appointment of a *Guardian Ad Litem*, which was denied by this court on February 19, 2014. Civil Minutes, Dckt. No. 61. In that matter, Trustee opposed the Motion to Appoint a *Guardian Ad Litem*, had expressed his concern that there were three particulars that Debtor had not addressed, namely that:

1. Movant had not addressed how long they believed the incapacity existed;

2. Movant referred to a question regarding whether they are currently married to the debtor, which may need to be addressed further;

3. Movant referred to a trust and durable power of attorney, which appears to have their estates settled and an authority of a successor trustee of Debtor's.

On the last point, Trustee asserted that it was not clear whether the success or trustee has been consulted, whether the bankruptcy can accomplish its goal of retaining the property, and cure the arrears if Debtor remains in default, and how the default occurred to begin with.

Additionally, the court noted at the hearing:

> Although this court will not require that the parties follow these specific procedures outlined in the persuasive case of *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012), the court will require at a minimum, a more in-depth explanation of when Breyer was afflicted by the condition, the circumstances in which the petition and bankruptcy paperwork was prepared and who signed it, and the exact status of Breyers current relationship with Allen. Until these matters are addressed, the court cannot appoint Deborah Allen as the guardian ad litem of the Charles Beyer.

Civil Minutes, Dckt. No. 61.

The Declaration of Deborah Allen addresses some of these concerns. Allen states that on December 30, 2006, Beyer and Allen obtained a marriage license and marriage ceremony, but that their marriage might not have been valid because Allen has no proof that the divorce from her first husband, now deceased, was ever completed. ¶ 1, Declaration, Dckt. No. 82. Allen states that Beyer's condition has gotten progressively worse. Allen does not pinpoint the exact date or time period of when Beyer started showing symptoms of the condition; nor does Hilzinger's Declaration identify when exactly Beyer became afflicted with the condition. Allen states, however, that Movant's condition began before the condition, and the Motion indicates that Allen filed the

Chapter 13 petition as a next friend on December 19, 2013.

Trustee and the court is still concerned, however, that the Motion to Appoint a Guardian Ad Litem and Motion to Appoint Personal Representative were not concurrently filed with Breyer's bankruptcy petition, which is troubling to the the court on two fronts: (1.) Breyer may not have had the capacity to certify that the information provided in his petition and schedules are correct; and (2.) Allen did not have express authority to sign the petition as Breyer's next friend. The voluntary Chapter 13 petition was filed on December 18, 2013 that was signed by both Breyer, and Allen as the "next friend." Dckt. No. 1 at 3. There are not additional documentation, explaining Breyer's condition or evincing Allen's intent to be appointed as Debtor's guardian ad litem. The parties did not file any paperwork showing that Allen was authorized to sign the bankruptcy petition on behalf of Breyer.

The Bankruptcy Code does not prescribe a time for when the guardian ad litem should file the bankruptcy petition for the person who does not have the capacity to maintain the action. As Trustee pointed out in their opposition to Movant's previous Motion to Appoint the Guardian Ad Litem, one bankruptcy court has ruled that such a motion must be made at the time of the petition. *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012).

In that case, the bankruptcy court cited concerns about the potential for abuse that exists with regard to motions to appoint a next friend under Fed. R. Bankr.P. 1004.1, nothing the high standard required by conservatorship statutes in Oregon to establish that guardians are dedicated to the best interests of the debtor. The court determined that a motion under Rule 1004.1 be accompanied by, among other things: a copy of the power of attorney giving movant authority to act for the debtor; a comprehensive declarations from the person seeking appointment; and that notice be given to all creditors, the UST, relatives, governmental entities disbursing funds to the debtor, etc. *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012).

DISCUSSION

Federal Rule of Bankruptcy Procedure 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person.

Federal Rule of Bankruptcy Procedure 1004.1 further states:

> If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1004.1 is patterned after Federal Rule of Civil Procedure 17(c), which applies to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7017. ("The following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary. The court shall appoint a guardian ad

litem for an infant or in competent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."). Fed. R. Civ. P. 17(c).

Here, the Movant has provided competent, sworn evidence from Debtor's physician, Dr. Reinhardt Hilzinger, M.D., regarding Debtors' dementia, and inability to make rational decisions with respect to his financial responsibilities. Movants argue that Debtor is incompettent to handle the bankruptcy case, and that the court shall appoint a personal representative or next friend to prosecute Debtor's bankruptcy case.

As it noted in the ruling denying Movant's previous Motion to Appoint a Guardian ad Litem, however, the court is still concerned that Allen has not demonstrated that eh comprehensive knowledge of Beyer's financial situation, and is committed to Beyer's best interests throughout the bankruptcy process. In this instance, the court again finds the case of *In re Lane* instructive. The court in *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012), noted that:

> Case law regarding the appointment of a next friend is of limited utility in establishing the procedure and the legal standard to apply. I conclude that a next friend may be appointed if the debtor is financially incapable (a standard drawn from Oregon's conservatorship statute, ORS 125.400), the movant knows about the debtor's financial situation, and is dedicated to the debtor's best interests.
>
> The court shares the concerns raised by the UST about the potential for abuse that exists with regard to motions to appoint a next friend under Fed. R. Bankr.P. 1004.1. Therefore, any future motion to appoint a next friend must comply with the following procedure and make a showing that the debtor(s) are financially incapable, and that the person seeking appointment knows the debtor(s)' financial situation and is dedicated to the debtor(s)' best interests.
>
> First, any petition filed by a next friend must be accompanied by a motion to be appointed as next friend. Second, the motion to be appointed as next friend must be accompanied by the following documents:
>
> > 1. A copy of the power of attorney giving the movant authority to act for the debtor(s), if any.
> >
> > 2. A declaration from the person seeking to be appointed as "next friend" providing the following information:
> >
> > > A. the movant's name and relationship to the debtor(s);
> > >
> > > B. whether the debtor(s) have a duly appointed representative under state law;
> > >
> > > C. the reason why appointment of a next

friend is necessary;

D. an explanation of why appointment of the movant as next friend would be in the debtor(s)' best interest;

E. the fee, if any, the next friend will charge the debtor;

F. the movant's criminal, financial, and professional history;

G. the movant's competence to handle the debtor(s)' financial affairs, including the movant's knowledge about the debtor(s)' financial affairs;

H. whether the movant has any interest, either current or potential, in the debtor(s)' financial affairs; and

I. whether any of the debtor(s)' debts were incurred for the benefit of the proposed next friend.

3. A letter from the debtor(s)' physician(s) regarding the debtor(s)' ability to conduct their own financial affairs.

4. A letter from the debtor(s)' care giver, if any, regarding the debtor(s)' ability to conduct their own financial affairs.

Third, the movant must give notice of the motion to be appointed as next friend to:

1. all creditors;

2. the United States Trustee;

3. any governmental entity from which the debtor is receiving any funds; and

4. the debtor(s)' closest relative, if known.

Fourth, the court will hold a hearing on the motion to be appointed as next friend, which shall occur before the 341(a) meeting, if possible. The person requesting to be appointed as next friend shall appear and testify at the hearing, either in person or telephonically.

The fact that the person seeking appointment as next friend is the debtor(s)' spouse or other close relative who might have an interest in the debtor(s)' financial affairs will not necessarily be a basis for denying the request.

The court had previously noted in its ruling on the Motion to Appoint

a Guardian Ad Litem, that the court will not require that the parties follow these specific procedures outlined in the persuasive case of *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012).

The court stated, however, that it will require at a minimum, a more in-depth explanation of when Breyer was afflicted by the condition, the circumstances in which the petition and bankruptcy paperwork was prepared-and who signed it, and the exact status of Breyer's current relationship with Allen. The court acknowledges that Allen's Declaration, Dct. No. 82, clarifies Allen's relationship with the Debtor, but the other information provided by the court has not since been provided. Allen does not disclose her competence to handle Debtor's financial affairs, and her knowledge of Debtor's finances. Allen also does not disclose her interests in any of the Debtor's financial affairs, and whether any of Debtor's debts were incurred for the benefit of Allen.

Additionally, Movant adds the additional party of Max Perry, as a second requested "personal representative" or "next friend" for Breyer in this bankruptcy proceeding. Movants provide no information about how Max Perry knows the Debtor in this case, and states that he is not related to Deborah Allen or Charles Beyer by blood or marriage. ¶ 5, Declaration of Max Perry, Dckt. No. 81. Perry merely attests to the fact that he is on the Board of Directors of the Alzheimer's Aid Society of Northern California, and that he has assisted people afflicted with Alzheimer's or dementia, and assisted them in locating suitable housing and care and resources for patients and caregivers. *Id.* at ¶ 53.

Perry does not describe the role that he will play in Debtor's bankruptcy case, merely stating that he understands that the appointment, if approved by the court, as personal representative/ next friend of the Debtor will allow him to review, sign, and submit various documents to this court. He further states that he "appreciates the importance of submitting accurate documents with the court."

The court does not understand Max Perry's role in Debtor's case. Perry testifies to his credentials as an individual, possibly a professional, who has a background in "assisting" people with Alzheimer's or dementia. He discusses his experience in helping patients assist suitable housing and care, and in accessing resources, but provides no explanation in how these qualifications equip him to handle the particulars of the duties of being a personal representative or next friend (authorized to submit bankruptcy documents on behalf of Debtor) in this case. Dckt. No. 81. Perry does not detail how he knows Debtor or Deborah Allen, how he became involved in this case, and why Movants are now suddenly adding another party as a potential personal representative Debtor, after Movants' initial Motion to Appoint Guardian Ad Litem was denied on the dearth of information on Allen's competence to serve as Debtor's guardian.

The appointment of a personal representative or "next friend" to act on behalf of Debtor in adjusting his debts and reorganizing the finances of his estate is a serious matter. The concerns of fraud, abuse, and for appointees to take advantage of debtors cannot be brushed aside. The present Motion to Appoint a Personal Representative remains deficient in critical information about the proposed personal representatives and next friends of Debtor, much of which had been previously requested by the court. On this basis, the Motion to Appoint a Personal Representative/ Next Friend 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 the Appointment of a Guardian Ad Litem 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 for the Appointment of a Personal Representative/ Next Friend is denied.

19. 13-31376-C-13 CAROLYN MOORE — MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
PPR-1 Mohammad M. Mokarram — 3-6-14 [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 Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to File Late Proof of Claim has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and 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 Motion to File Late Proof of Claim is denied. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Bank of America, N.A., its assignees and/or successors in interest, ("Movant"), a secured creditor, requests to allow Movant to file a Proof of Claim despite the January 2, 2014 bar date set in this case.

Movant holds a junior lien on the property identified as 3615 Branch Street, Sacramento, California, and its claim was reflected in the Debtor's Schedule D and was neither contingent, unliquidated nor disputed. Pursuant to the Notice of Chapter 13 Bankruptcy case, Meeting of Creditors and Deadlines, the bar date for claims was January 12, 2014.

On August 29, 2013, the Debtor filed a proposed Chapter 13 Plan which was filed. Dckt. No. 5. The Plan treats the secured portion of Movant's claim in Class 2 (where the value of the interest in collateral is $0.00), and treats the unsecured portion of Movant's claim in Class 7, where the Debtor intends to pay 1% dividend to unsecured creditors totaling $52,925.00. Debtor's Schedule F evidences unsecured debt of only $2,298.00; the remaining portion of the payout to unsecured creditors was earmarked for Movant's unsecured claim of $50,627.00. The order confirming the plan was entered October 28, 2013. Dckt. No. 23. Movant states that there is no dispute that a formally filed Proof of Claim was not filed prior to the claims bar date.

DISCUSSION

Informal Claim

A late-filed proof of claim may be allowed if it is found to relate back to an "informal" proof of claim that was filed prior to the bar date. The informal claim doctrine, "equitable in nature, permits a court to declare that a creditor who failed to file a timely proof of claim will nevertheless be treated as if it had done so, if warranted by the equities of the case." *In re Brooks*, 370 B.R. 194, 58 Collier Bankr. Cas. 2d (MB) 357 (Bankr. C.D. Ill. 2007).

Courts recognizing this doctrine generally apply a five-part test. A document will qualify as an informal proof of claim only if:

1) it is in writing;

2) contains a demand by the creditor on the bankruptcy estate;

3) expresses an intent to hold the estate liable for the debt;

4) is filed with the bankruptcy court; and

5) under the specific facts of the case, it would be equitable to treat the document as a proof of claim.

In re American Classic Voyages Co., 405 F.3d 127, 131–32 (3d Cir. 2005); *In re Reliance Equities, Inc.*, 966 F.2d 1338(10th Cir. 1992); *In re Nikoloutsos*, 199 F.3d 233(5th Cir. 2000); *In re Fish*, 456 B.R. 413(B.A.P. 9th Cir. 2011).

Application of the doctrine varies widely from court to court. Bankr. Prac. for Gen. Practitioner § 7:3. For instance, some courts have held that the doctrine should be applied only in situations in which the creditor has attempted to file a proof of claim, but for technical reasons, the proof of claim was defective. *See In re Fink*, 366 B.R. 870(Bankr. N.D. Ind. 2007) (informal proof of claim doctrine should be limited to recognize only defective or incomplete proof of claim as an informal proof of claim; motion for relief and a dischargeability complaint held not to constitute an informal proof of claim); *In re Brooks*, 370 B.R. 194(Bankr. C.D. Ill. 2007) (declining to treat motion for relief as informal proof of claim).

Other courts have permitted pleadings, such as a motion for relief from the automatic stay or complaint objecting to discharge or dischargeability, to serve as an informal proof of claim. *See In re Charter Co.*, 876 F.2d 861 (11th Cir. 1989) (motion for relief constituted an informal proof of claim because it apprised the court of the existence, nature and amount of the creditors' claims and expressed a clear intent to hold the debtor liable for the debt); *Matter of Pizza of Hawaii, Inc.*, 761 F.2d 1374(9th Cir. 1985) (motion for relief was informal proof of claim); *In re Yucca Group, LLC*, 2012 WL 2086485 (B.A.P. 9th Cir. 2012) (removal of state court lawsuit to bankruptcy court treated as informal proof of claim, notwithstanding dismissal of the complaint prior to the bar date); *In re Benedict*, 65 B.R. 95 (objection to confirmation treated as informal proof of claim); *In re Hayes*, 327 B.R. 453 (Bankr. C.D. Cal. 2005) (complaint objecting to dischargeability of debt was informal proof of claim); *In re*

Boehm, 252 B.R. 576 (Bankr. M.D. Fla. 2000) (complaint objecting to discharge and dischargeability was informal proof of claim).

Here, Movant argues that the requirements for filing a timely informal claim were fulfilled, through Debtors filing their Motions to Value the Secured Claim of Movant, and the Motion to Confirm the Proposed Chapter 13 Plan and Order Confirming Plan, which treat Movant's claim as unsecured. Movant asserts that the Motion to Value was filed by the Debtors before the claims bar date and contained all of the requirements for filing a claim. Movant claims that Debtor's Motion acknowledged the liability of the estate by requesting that the debt be allowed as unsecured. Debtor was aware of the claim when she filed her proposed Plan, and gave notice to the Chapter 13 Trustee and all creditors of the cramdown of the claim, and the intent to allow the claim to be treated as an unsecured claim through the plan.

Movant has not, however, met the requirements of the five-part test, adopted by the Ninth Circuit in *In re Fish*, 456 B.R. 413, 417 (B.A.P. 9th Cir. 2011). The iteration of the five-part test laid out in *In re American Classic Voyages*, and adopted by *In re Fish* consists of the following;

(1) presentment of a writing;

(2) within the time for the filing of claims;

(3) by or on behalf of the creditor;

(4) bringing to the attention of the court;

(5) the nature and amount of a claim asserted against the estate.

Debtor's Motion to Value the Secured Claim of Movant and Motion to Confirm the Chapter 13 Plan were presented in writing, within the bar claims date of January 12, 2014. These Motions, however, were not brought by or on behalf of the creditor. Debtor brought these motions to achieve the reorganization of the estate, and not to advance the interests of the Creditor, Bank of America, N.A. The Motions do not assert a claim against the estate, and merely evince Debtor's understanding that a claim exists against the estate. Debtor's Motion to Value the Secured Claim attempts to bifurcate the portions of Movant's claim into unsecured and secured parts to be paid through the bankruptcy plan, and do not attempt to recover from Debtor the value of the claim.

The courts have held that the Chapter 13 plan cannot serve as informal proof of claim for unsecured claim for which no proof of claim was timely filed, because the plan does not include demand by creditor. In re Babbin, D.Colo.1993, 160 B.R. 848, on remand 164 B.R. 157. The courts have also held that a non-dischargeability complaints and motions for relief requires more affirmative conduct on the part of creditor to assert an informal claim. *In re Hayes*, Bkrtcy.C.D.Cal.2005, 327 B.R. 453; *In re Fink*, Bkrtcy.N.D.Ind.2007, 366 B.R. 870.Bankruptcy.

To be considered informal proof of claim, a document must contain specific demands setting forth amount and nature of debt and intent to hold debtor liable. *Matter of Dingleman*, Bkrtcy.E.D.La.1988, 107 B.R. 100 The Motions to not constitute specific demands by the Creditor on the bankruptcy estate. Although the Chapter 13 Plan holds the estate accountable for

paying off Creditor's debt, Movant is not asserting the claim, and Debtor does not set forth the specific demand of Movant's claim. Debtor is not attempting to assert that Movant is entitled to recover from Debtor or should participate in the distribution of proceeds from the plan. Thus, the court holds that an informal claim was not filed prior to the claims bar date.

Excusable Neglect

A motion to extend that is not made until after the claim bar date has expired may only be granted on a finding of excusable neglect. Federal Rule of Bankruptcy Procedure 9006(b); *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership* (1993) 507 US 380, 382, 113 S.Ct. 1489, 1492.

Whether neglect is excusable calls for an equitable determination, taking into account all relevant circumstances. These factors include:

1. The danger of prejudice to the debtor

2. Length of the delay and its potential impact on judicial proceedings

3. Reasons for the delay, including whether it was within the movant's reasonable control;

4. Whether the movant acted in good faith.

Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 US at 385, 113 S.Ct. at 1493.

The Determination of whether neglect is "excusable," warranting allowing of late filing of claim an equitable one, taking account of all relevant circumstances surrounding party's omission; these include danger of prejudice to debtor, length of delay and its potential impact on judicial proceedings, reason for delay, including whether it was within reasonable control of movant, and whether movant acted in good faith. *Id.* Of the four factors above, fault in the delay is preeminent. Matter of Kmart Corp. (7th Cir. 2004) 381 F3d 709, 715. Excusable neglect is not found when claimant's counsel leaves the claim filing until the latest possible time. *Id.* at 715. The failure to timely file a proof of claim "solely from inadvertence" is not excusable neglect of the type sufficient to justify extending the claims bar deadline. *In re Enron Corp.* 419 F3d 115, 126 (2nd Cir. 2005).

Here, Movant does not allege any facts that would support a finding of excusable neglect. Although the danger of prejudice to the debtor is mitigated by Debtor's inclusion of Movant's claim in her Chapter 13 Plan, Movant has not advanced any reasons about why it missed the claims bar date. Movant merely asserts that the Trustee and creditors were already given notice of the claim through Debtor's Motion to Value its Secured Claim and the Chapter 13 Plan.

Movant does not describe any conditions that reasonably prevented it from filing a timely claim. Movant did not attempt to file any type of informal claim on its own behalf during the claims submission period. Movant has not alleged sufficient facts, showing that excusable neglect led to Movant missing the claims bar deadline.

In the conspicuous absence of such facts alleging excusable neglect, the court can only assume that the only reason for Movant's delay in filing the claim was inadvertence or inexcusable neglect that has led to Movant's regrettable error in missing the deadline. The court finding that an informal claim was not filed, and excusable neglect did not cause the untimely filing of Movant's Proof of Claim, the Motion to File a Late Proof of Claim is denied.

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 File a Late Proof of Claim filed by the Creditor, Bank of America, 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 Motion to File a Late Proof of Claim is denied.

20. 13-28280-C-13 JAMES/LORI PERRY — MOTION TO APPROVE LOAN MODIFICATION
ACK-1 Aaron C. Koenig — 2-26-14 [71]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and Office of the United States Trustee on February 26, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

Bank of America, 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 terms of the loan modification are as follows: The new loan balance is $393,367.23. The past due amounts will be added to the principal balance.

The monthly payment will be $2,100.06 and includes taxes and insurance. For years 1-5 the interest rate will be 2.000% and after the 5th year will adjust up yearly to 4.250% in year 8. Debtors will not be receiving any funds from the proposed modification. If approved, this loan modification will put the arrears the debtors owe on the back end of the mortgage and provides them with a payment they can afford.

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

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

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

IT IS ORDERED that Debtors are authorized to amend the terms of their loan with Bank of America, which is secured by the real property commonly known as 127 Rutherford Drive, Vacaville California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 74, in support of the Motion.

21. 12-34382-C-13 FREDRICK/GENA MEIER MOTION TO SELL
CYB-2 Candace Y. Brooks 3-21-14 [76]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2014. By the court's calculation, 18 days' notice was provided. 21 days' notice is required. That requirement was not met.

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

The court's tentative decision is to deny the Motion to Permit Debtor to Sell Property 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.

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.

Here, Debtors filed and served the Motion to Sell on March 21, 2014, only eighteen (18) days before this hearing date. Because Debtors have not provided sufficient notice for potential respondents to file written opposition to the motion under Federal Rule of Bankruptcy Procedure 2002(a)(2), this motion is denied without prejudice.

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

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

22. 14-20995-C-13 RODNEY/CHANDRA LAMBERT — OBJECTION TO CONFIRMATION OF PLAN BY VALLEY BANK
KO-1 Richard L. Jare — 3-13-14 [78]
Thru #24

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 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:

Creditor Valley Bank ("Creditor"), opposes confirmation of the Plan on the following grounds:

1. Debtors propose to increase plan payments by $500 per month to $2,300 beginning at Month 15. Item #17 in Debtors' Amended Schedule I states that the increase in payments is based on Debtor Rodney Lambert restoring dealer licensing and increasing income, and that rent collected will increase by $50 increments each year.

2. Creditor argues that Debtor's income is uncertain; Rodney Lambert is self-employed as a used auto sales broker, and his business is located in Florida and he does not have a current auto dealer license. Transcript, page 16. At the 341 Meeting, Debtor Rodney Lambert further testified that he has lived in California one year, and has been looking for employment but has not yet found such employment with an auto dealership in California. Rodney Lambert testified that he intends to work to make income before reactivating his license and start a similar business in California. It is unclear whether Rodney Lambert will be able to earn enough income to allow him to obtain a dealer license, start his own auto dealer business, and increase monthly income in time to make the stepped up monthly plan payment.

3. Rodney Lambert also testified that, with respect to the increase in rent of $50 per month each year, Rodney Lambert testified that the

current tenants have agreed to keep renting the rental property in Florida and will agree to annual rent increases, and that the tenants told him they only want to sign a one year contract at first and then will sign a new one. The Chapter 13 Plan has a term of 60 months, and Debtors' rental tenants have only signed contract for one-year periods at the price of $1,300 per month, as stated in Debtors' Amended Schedule I.

4. Creditor states that Debtors' income may not be sufficient if the Chapter 13 Plan Payments are Increased after Debtors' Motion to Value the Secured Claim of Creditor is denied. The court notes that this Motion has been continued to this hearing date. Dckt. No. 87.

Based on these concerns, Creditor argues that the Chapter 13 Plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). Creditor additionally states that its mortgage on Debtor Rodney Lambert's rental property includes a lien on the rents and profits from that property. The Bank has not consented to the use of its cash collateral, but is willing to do so on in the context of its use in the Chapter 13 Plan, which must described how the net monthly proceeds in collected rent will be used to either repair, maintain, or protect the court's collateral.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court notes that Trustee has also filed an Objection to Confirmation of Debtors' Chapter 13 Plan, TSB-1, which the court is also sustaining. The objection is sustained and the Plan is not confirmed.

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

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

23. 14-20995-C-13 RODNEY/CHANDRA LAMBERT — CONTINUED MOTION TO VALUE COLLATERAL OF VALLEY BANK
RJ-2 Richard L. Jare — 2-11-14 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to grant the Motion to Value the Secured Claim of Valley Bank and value the claim at $65,000. 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:

At the March 25, 2014, hearing, the court decided to continue the hearing on this matter, in light of there being only a $10,000 difference between Debtors' valuation and the Creditor's valuation. The court continued the hearing and ordered the parties to meet and confer. Civil Minutes, Dckt. No. 87. The hearing on this Motion had already been previously continued to permit Creditor Valley Bank to file and serve its opposition to the Motion, and to allow Debtors to file and serve any replies if so desired. Civil Minutes, Dckt. No. 51.

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

The first deed of trust and only deed on the real property is held by Valley Bank, and it secures a loan with a balance of approximately $69,272.00. Debtor asserts that the respondent creditor's claim secured by a junior deed of trust is under-collateralized, and that the creditor's

secured claim should be determined to be in the amount of $65,000.00 pursuant to 11 U.S.C. § 506(a).

OPPOSITION BY CREDITOR

Creditor opposes the Motion to Value the Secured Claim on the basis that the subject property, located at 1071 Little River Drive, Miami Florida, is actually valued at $75,000.00. Creditor offers the Appraisal of the subject property, designated as Exhibit 1, Dckt. No. 66 in support of the Motion to Value, and the authenticating declaration of Lloyd Persaud, who testifies that he is a certified Residential Appraiser employed by the Florida appraisal company of Peninsula Appraisal Services. Dckt. No. 65.

The Appraisal is stated to be an Exterior-Only Inspection Residential Appraisal Report, with a date of valuation of June 20, 2013, for the singly family residence located at 1071 Little River Drive, Miami, Florida. Exhibit Cover Sheet, Dckt. No. 66. The report includes a description of the neighborhood, possible adverse conditions on the marketability of the property (which includes a note that the property is located within one mile of an expressway), and an explanation from the appraiser that the property was physically inspected from the exterior front, from the street only, and data on the property's room cout, patio, and porches were obtained from public data.

The report includes plat, flood, and location maps, as well as photographs of the property and of comparable units in the area. The appraisal includes an analysis of three other comparable properties in the area, with prices that bracket the appraiser's valuation of the subject property at $75,000. Exhibit 1, Dckt. No. 66. The Appraiser, Lloyd Persaud, concludes that the value of the property is $75,000.00.

REPLY TO OPPOSITION BY CREDITOR

Debtors challenge Creditor's valuation of the property on the basis that the appraisal offered, Dckt. No. 66, had already been performed on June 20, 2013. Although Creditor was already in possession of an appraisal determining that the value of the property is $75,000, Creditor has asserted different values for the property at different points of Debtors' case. For instance, Creditor stated that the value of the property was $69,271.77 in a Motion for Relief from Stay in Debtors' prior bankruptcy case, Dckt. No. 31. Case No. 13-30287, filed on September 27, 2013.

Debtors also ask the court to note why the qualifications of the appraiser have not been stated; upon a review of the Declaration of Llloyd Persaud (Dckt. No. 65) however, it appears that the appraiser has detailed his credentials as a professional appraiser, and includes a copy of his current Certified Residential Appraiser license in an attachment to the Appraisal Report on Dckt. No. 66. Debtors' more well-founded concern is that the appraisal was performed at a distance, with observations conducted at the street view of Debtors' property. Based on the limitations of preparing an appraisal of a property from afar, Debtors assert that their own valuation of the property is more credible.

Joint Debtor Rodney Lambert testifies that property is in need of "some repairs," and needs exterior painting. Lambert further testifies that the interior is dated, and that based on his familiarity with the condition of the interior (which is not captured in Creditor's appraisal), that the

replacement value of the property on the petition date is $65,000. Dckt. No. 83. Lambert alleges that the appraisal prepared by Lloyd Persaud was not prepared with due care (based on an error appraiser committed in indicating the value of the property), and offers appraisals from internet sites appraisal.com and zillow.com , which is not admissible evidence that can be considered by the court, to corroborate Debtors' valuation. Fed. R. Evid. 801, 802.

The court would typically consider a valuation prepared by a professional appraisal more persuasive and credible than the admissible lay opinion of value offered by the debtor, but acknowledges Debtors' concern that the appraisal was conducted from a street view of the property, and did not include adjustments for any interior repairs that may only be discernable to the owners and those who are familiar with the condition of the interior of the residence. Therefore, the court is persuaded to accept Debtors' valuation of the property at $65,000.00.

The court continued the hearing to permit the parties to meet and confer regarding the valuation of the subject property. Nothing further has been filed on the docket.

The court shall issue a minute order 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 Valley Bank secured by a second deed of trust recorded against the real property commonly known as 1071 Little River Drive, Miami, Florida, is determined to be a secured claim in the amount of $65,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $65,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

24. 14-20995-C-13 RODNEY/CHANDRA LAMBERT — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Richard L. Jare — 3-13-14 [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 and Debtors' Attorney on March 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 following grounds:

1. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the pending Motion to Value the Secured Claim of Valley Bank, RG-2, which has not yet been resolved.

2. The Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtors' Amended Schedule I indicates gross monthly income on line 1 for Chandra Lambert of $5,724.56, and payroll deductions of $570.23 for taxes, $261.45 for insurance, and $408.92 for retirement, leaving a net income of $3,383.96. Debtors' most recent paystubs provided to the Trustee indicates gross income of $6,192.00 per month, deductions of $669.38 for taxes, $345.77 for insurance, $454.32 for retirement, and $8.00 for charity, leaving a net income of $4,705.53. Debtor has approximately $321.00 of additional net income which may be paid into the plan for the benefit of creditors.

3. Debtors may not be able to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because their amended Schedule I indicates gross business income of $4,422.43 per month. Debtor Rodney Lambert testified at the First Meeting of Creditors that he is in the process of closing his Florida business and will be seeking employment. Trustee is

not certain Debtor actually has the income listed on the Schedule at this time.

4. Debtors have not provided the required business documents to Trustee to date, such as the Business Questionnaire, six months of bank statements, and six months of profit and loss statements.

5. Debtors have not used the new Official Form B 61 and Official B 6 J (Schedules I and J) forms, which became standard on December 1, 2013.

Based on the foregoing, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court notes that Creditor Valley Bank has also filed an Objection to Confirmation of the Chapter 13 Plan, KO-1, which the court is also sustaining on this hearing date for many of the reasons advanced by Trustee. This instant objection is sustained and the Plan is not confirmed.

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

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

25. 14-20596-C-13 EDEN ABELLA — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
TSB-1 Pro Se — 3-13-14 [20]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 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 following grounds:

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

2. The Debtor has 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).

3. Debtor is $100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $100.00 is due on March 25, 2015. The case was filed on January 23, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $0.00 into the plan to date.

4. Debtor's Petition does not list any prior filings. A Pacer search reveals two prior cases, Case Nos. 10-49375 and 12-39903. The cases should be listed on page 2 of the Debtor's Petition.

5. Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtors' testimony at the First Meeting of Creditors held on March 6, 2014. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(2)(2) requires Debtors to file a spousal wavier, signed by Debtor and Debotor's spouse, for the use of claimed exemptions.

California Code of Civil Procedure § 703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver failed with the court after reviewing the docket. The Trustee's Objection to Exemption, TSB-2, is set for hearing on April 22, 2014.

6. The Statement of Current Monthly Income Form 22C claims a household size of 7 people on line 16. Dckt. No. 12. Debtors' Schedule I, however, fails to list any dependents. Debtor testified that she has three children, her mother, son in law and one gradnchild living with her,

7. Debtor's Statement of Financial Affairs omits certain information. Dctk. No. 11. Item #1 only lists Debtor's income for 2013. The form calls for the total year to date gross income as well as income received during the two years prior to this calendar year. Item #2 is marked as "none." Debtor's Schedule I lists on line 13, monthly income from roommates of $350.00. The form calls for total other income for the two years prior to the filing date. Item #16 (spouses and former spouses) is marked as "none." Debtor testified that she is separated from her spouse. The form calls for the name of the spouse to be listed.

8. Debtor's Plan call for payments of $100.00 for thirty-six months. Class 2 of the plan lists a monthly dividend to SPS for $950.00 per month. Dckt. No. 13. The plan payment of $100.00 will not cover the payment to SPS plus Trustee fees, which total more than $1,000.00 per month.

9. Debtor lists the Class 2 secured debt to SPS at a monthly dividend of $950.00. Debtor testified that this is her mortgage payment, the regular mortgage contract payment is $1,200.00 per month, and she has not paid the mortgage for over one year. This debt should be listed in Class 1 of the plan at the proper contract payment, with the arrearages paid for.

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. 13-28798-C-13 PHONDARA SANCHEZ MOTION TO CONFIRM PLAN
SJS-4 Scott J. Sagaria 2-24-14 [67]

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 February 24, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 24, 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.

27. 14-21098-C-13 TARU BIRAK
TSB-1 Candace Y. Brooks

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-13-14 [27]

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

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

1. Debtor did not appear to be examined at the First Meeting of Creditors held on March 6, 2014. 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 April 3, 2014 at 10:30 am.

2. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value the Secured Claim of Citibank, N.A., which is set for hearing on March 25, 2014. The Motion to Value the Secured Claim, CYB-2, was granted on March 25, 2014. Thus, this part of Trustee's objection is resolved.

Based on Debtor's failure to appear the 341 Meeting of Creditors, however, 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.