**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

**May 20, 2014 at 3:00 p.m.**

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**1. 14-23800-E-13 TROY/KIMBERLY JEPSEN — MOTION TO VALUE COLLATERAL OF OCWEN MORTGAGE SERVICING**
**MWB-1 Mark W. Briden — 4-21-14 [14]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 21, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Ocwen Mortgage Servicing, "Creditor," is denied without prejudice.**

The Motion to Value filed by Troy and Kimberly Jepsen, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration.

However, the court cannot determine from the evidence presented if in fact Ocwen Mortgage Servicing is in fact a creditor. In several cases before this court, Ocwen Mortgage Servicing, Inc. has informed this court

that it is merely a servicing agent for other legal entities which are the actual creditor (who has the secured claim which is to be valued pursuant to 11 U.S.C. § 506(a)). No evidence has been presented to the court that Ocwen Mortgage Servicing is in fact the creditor in this case to which the court can value the secured claim.

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 that this loan servicing company is a creditor in this case. The Debtor does not testify that he borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Ocwen Mortgage Servicing. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the third deed of trust. FN.1.

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FN.1. A LEXIS on-line search indicates that a deed of trust identifying MTH Mortgage LLC of Scottsdale, Arizona as being a beneficiary under a deed of trust recorded on October 7, 2005 to securing a "Credit Line (Revolving)." Possibly this is the creditor. If Ocwen **Mortgage Servicing** is the servicing agent for MTH Mortgage, LLC or its transferee of the note/credit agreement, than Ocwen Mortgage Servicing can identify the creditor so that the Debtors can properly name it in the Motion, properly serve the creditor, and obtain an effective order from this court valuing the secured claim of that creditor pursuant to 11 U.S.C. § 506(a).

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

**2. 09-46602-E-13 THEODORE/JENNIFER WILSON MOTION TO MODIFY PLAN**
**NLE-1 Peter G. Macaluso 3-18-14 [39]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2014. By the court's calculation, 63 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 18, 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.

**3. 12-33302-E-13 GERALD/BARBARA PORTLOCK — MOTION TO AVOID LIEN OF ENERBANK, USA**
**SDB-5 W. Scott de Bie — 4-11-14 [70]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Pursuant to this Court's Order on Stipulation Avoiding Judicial Lien of Enerbank, USA, a Utah Corporation Pursuant to 522(F)(1), dated April 30, 2014, the Motion to Avoid Lien **is removed from the calendar**. Dckt. 84.

**4. 12-33302-E-13 GERALD/BARBARA PORTLOCK — MOTION TO MODIFY PLAN**
**SDB-6 W. Scott de Bie — 4-11-14 [76]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 11, 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.

**5. 13-36004-E-13 ALLEN/LORI DOSTY — MOTION TO CONFIRM PLAN**
**DMA-6 David M. Alden — 4-5-14 [96]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2014. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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.**

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 March 20, 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.

**6. 14-20006-E-13 TSB-1 — RYAN/MEGAN ROSTRON — Scott J. Sagaria — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 2-13-14 [22]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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

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

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

**The Objection is overruled as moot and confirmation is denied.**

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on May 12, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

**7. 09-37907-E-13 JASON/STEPHANIE BLACK — MOTION TO MODIFY PLAN**
**SDB-4 W. Scott de Bie — 4-8-14 [66]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

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

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

holding that:

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**8. 13-35107-E-13 FERNANDO RODRIGUEZ**
**PLL-3**

**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.**
**4-15-14 [52]**

**CASE DISMISSED 4/18/14**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

**9. 14-20708-E-13 NOEL ORLANDO — MOTION TO CONFIRM PLAN**
**SDH-1 Scott D. Hughes — 3-27-14 [29]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that the amended plan fails to authorize payments to Ocwen Loan Servicing, which were made by the Trustee prior to the proposed amended plan. The Trustee states he has paid a total of $1,892 to Ocwen Loan Servicing to date. Trustee also argues that Debtor fails to provide any evidence that his account with Ocwen Loan Servicing is now current.

Additionally, Trustee states that Debtor lists in Class 2 of the plan, Gateway One/Audi in the amount of $431,140.49. Trustee states this may have been a typographical error, where the Debtor intended the amount to be $31,140.49. The Trustee does not oppose the Debtor correcting this figure in the order confirming, should the Court allow such amendment in the order confim1ing.

The Trustee opposes confirmation offering evidence that the Debtor is $3,805.00 delinquent in plan payments. This is strong evidence that the

Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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

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

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

**10. 14-20708-E-13 NOEL ORLANDO**
**TJP-1 Scott D. Hughes**

**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY**
**3-18-14 [23]**

**GATEWAY ONE FINANCE & LENDING VS.**

**CONT. FROM 4-22-14**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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Creditor Gateway One Finance & Lending having filed a Withdrawal of the Motion for Relief from the Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

**11. 14-22409-E-13 ROBERT/MARY LYTLE**
**LBG-1 Lucas B. Garcia**
**MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE**
**4-9-14 [16]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Capital One Auto Finance, "Creditor" is granted.**

The Motion filed by Robert and Mary Lytle, "Debtor," to value the secured claim of Capital One Auto Finance, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Honda Accord, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $10,275.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 18, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,632.22. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $10,275.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Robert and Mary Lytle, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance, "Creditor," secured by an asset described as 2008 Honda Accord, "Vehicle," is determined to be a secured claim in the amount of $10,275.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,275.00 and is encumbered by liens securing claims which exceed the value of the asset.

**12. 14-22409-E-13 NLE-1 ROBERT/MARY LYTLE Lucas B. Garcia OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 4-16-14 [21]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

**The Objection is overruled as moot and confirmation is denied.**

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on April 25, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

The Objection to Confirmation of the Chapter 13 Plan

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

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

**13. 13-35314-E-13 MS-2 BORIS/ZINAIDA MURZAK Mark Shmorgon MOTION TO CONFIRM PLAN 3-24-14 [52]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on April 25, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The motion is denied as moot and the plan is not confirmed.

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

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

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

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

confirmed.

**14. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON — CONTINUED MOTION TO APPROVE LOAN MODIFICATION**
**CK-5 Catherine King — 4-4-14 [99]**

**CONT. FROM 5-6-14**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The court's decision is to continue the hearing for Motion to Approve Loan Modification and order Wells Fargo Bank, N.A. to appear, provide a copy of the loan modification agreement, and show cause why corrective sanctions are not ordered.**

**PRIOR HEARING**

Wells Fargo Home Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification. The trial payments are in the amount of $1,386.16 to be paid directly by Debtors on February 1, 2014, March 1, 2014 and April 1, 2014. All payments have been made. Wells Fargo

Home Mortgage is in the process of determining the final modified payment. Debtors believe that the payment will be the current $1,386.16, or not more than his original note payment of $1,463.00.

**Trustee's Opposition**

The Chapter 13 Trustee opposes to the Motion on the ground that the final loan modification agreement has not been filed. According to the Trustee, Exhibit A filed by Debtors is merely for a trial loan payment period.

**DISCUSSION**

It appears the actual Loan Modification Agreement has not been presented to the court as is required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor filed an additional Declaration and Exhibit of a letter dated May 2, 2014 from Wells Fargo Home Mortgage. Dckts. 112, 113. However, there does not appear to be an actual Loan Modification for the court to review.

**ORDER FOR WELLS FARGO BANK, NA. TO APPEAR**

While there is a term sheet for a modification, Wells Fargo Bank, N.A. appears to have refused to provide the Debtors with a copy of the actual loan modification agreement for which approval is sought. While the basic loan terms are stated, the court does not know what other "standard terms" are being made part of the loan modification.

The Term Sheet, which is in letter form sent to Debtors' counsel, states,

> **How your client can accept this offer:**
>
> Please review the proposal with your client. IF the terms meet your approval, the next step is to file a petition with the bankruptcy court to gain their consent to modify the first mortgage...When you receive written consent, please forward it to my attention. Once received, we will send the loan documents to you and your attorney for original signatures. We will then withdraw any proof of claim in this case and process the modification as noted.

Exhibit B, Dckt. 113.

This statement by Wells Fargo Bank, N.A. concerns the court for several reasons. First, the court has made it clear over the last four and one-half years that a copy of the proposed loan modification agreement is required by the Bankruptcy Rules and is necessary for this court to approve such post-petition credit. The failure and refusal of Wells Fargo Bank, N.A. to provide such agreement to be presented to the court appears to be

part of a coordinated campaign to obtain court authorizations for financing on terms and conditions undisclosed to the court.

Second, this Term Sheet uses some very imprecise terms. First, it instructs Counsel for the Debtors to file a "petition" to gain the bankruptcy court's "consent." As attorneys know, a "petition" in bankruptcy court is the document filed to commence a bankruptcy case. Taken at face value, Wells Fargo Bank, N.A. is telling Debtors' Counsel to file another bankruptcy case. Relief is requested from the bankruptcy court either by adversary proceedings (Fed. R. Bank. P. 7001) or contested matters (Fed. R. Bankr. P. 9014., generally a motion or an "application" if expressly authorized by the Federal Rules of Bankruptcy Procedure).

Third, the court is uncertain as to what Wells Fargo Bank, N.A. intends to have the Debtors obtain from the court when it demands that the Debtors obtain the court's "written consent." A federal judge does not provide "consent" to parties to undertake actions. Commonly the court will issue judgements and orders. Some orders, such as post-petition financing, may "authorize" a trustee, Chapter 13 debtor, or debtor in possession to obtain post-petition financing. 11 U.S.C. § 364(b) and (c), Fed. R. Bank. P. 4001(c).

Fourth, the court has no idea what other terms and conditions may be stated (or buried) in the actual loan modification agreement. Quite possibly the terms could include one in which the Debtors are required to waive their discharge, agree to a forfeiture of their property, and pay a default fee equal to 100% of the debt, as computed by the Bank, in the event of any other default. The loan modification agreement may require the Debtors to meet and maintain other financial conditions (such as deposit requirements at the Bank, obtain insurance from Bank related entities, or pay for weekly property inspections or other "due diligence" fees to Bank). If the court were to blindly "consent" to such loan modification agreement that Wells Fargo Bank, N.A. might subsequently generate, the Bank could (and most likely would) defend any attacks thereon by stating, "as a matter of federal law, the bankruptcy judge, after due consideration, issued an order stating that this loan modification agreement was proper." The court will not hand to the Bank such carte blanche authorization.

In reality, the court suspects that the actual loan modification agreement form is straight-forward and drafted in good faith. Wells Fargo Bank, N.A. has appeared before this court on many occasions, each time its attorneys and the Bank presenting themselves as reasonable "financial institution citizens" asserting and enforcing its rights. However, the court cannot have one set of rules for the "teacher's pet creditors" who have overtime appeared to be acting in good faith and then create a list of "bad boy creditors" to whom the Rules will be enforced. Such a two tier system of justice is antithetical to the federal judicial process. It also leads to the inevitable conclusion that certain parties get whatever they want merely because the judge is biased. Finally, such a two tier system breeds a contempt for the system by the "favored parties," which inevitably leads to abusive conduct being "consented to" by the court.

The court finds it necessary to order Wells Fargo Bank, N.A. to appear and (1) present the court with the loan modification agreement form to be executed by the Debtors and (2) explain why it has failed to provide a

copy of the loan modification agreement to Debtors' Counsel to present to the court. The court recognizes that the loan modification agreement may well be the unexecuted form with the interest rate and payment terms left blank, with such terms being stated in the Term Sheet filed as Exhibit B. The court can work with the loan modification form and Term Sheet as stating the universe of terms which will be stated in the final Loan Modification Agreement to be stated by the parties.

The court shall order that Wells Fargo Bank, N.A., thought an senior officer with personal knowledge of the bankruptcy debtor loan modification process and procedures of the Bank, and its counsel, **NO TELEPHONIC APPEARANCES PERMITTED for the Bank and its counsel**, appear at 3:00 p.m. on June 24, 2014, to respond and show cause why, with respect to the following:

A. Produce a copy of the loan modification agreement form to be signed by the Debtors in connection with the loan modification which is the subject of the present motion;

B. Provide an explanation and good faith business reasons for withholding the loan modification agreement form and not providing the bankruptcy court with all of the terms and conditions of the loan modification;

C. Show Cause why the court does not order Wells Fargo Bank, N.A. to provide debtor counsel with copies of the loan modification agreement form with an statement of modified loan payment terms which loan modification terms may be presented to the bankruptcy court with the statement of modified loan payment terms.

D. Show Cause why the court does not order Wells Fargo Bank, N.A. to pay $1,000.00 in compensatory corrective sanctions to Counsel for the Debtors for having to appear at two hearing in which the Motion to Approve Loan Modification could not be granted because Wells Fargo Bank, N.A. failed to provide Debtors' Counsel with a copy of the proposed Loan Modification Agreement or the loan modification agreement form to be used by the parties.

Written responses to the above matters and a copy of the Loan Modification Agreement or loan modification agreement form, which is properly authenticated by competent testimony, shall be filed and served on Counsel for Debtors, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office) on or before June 10, 2014. Replies, if any, to the written responses shall be filed and serve on or before June 17, 2014.

In addition to the Debtors, Debtors' Counsel of Record, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office), the Clerk of the Court shall serve a copy of this Order on:

A. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
101 N. Phillips Avenue
Sioux Falls, SD 57104

B. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
CSC-Lawyers Incorporating Service, Registered Agent
2710 Gateway Oaks Dr., STE 150N
Sacramento, CA 95833

C. Courtesy Copy to Counsel Filing Proof of Claim in this Case for Wells Fargo Bank, N.A.

David M. McGraw, Esq.
Law Offices of David M. McGraw
2890 N. Main Street
Walnut Creek, California 94597

D. Courtesy Copy to Counsel Appearing for Wells Fargo Bank, N.A. in Unrelated Cases

Austin P. Nagel,
Law Offices of Austin P. Nagel
111 Deerwood Road, Suite 350
San Ramon, California 94583

The court shall issue an Order (not minute order form) substantially in the following form holding that:

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

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

**IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on June 24, 2014.

**IT IS FURTHER ORDERED** that Wells Fargo Bank, N.A., thought an senior officer with personal knowledge of the bankruptcy debtor loan modification process and procedures of the Bank, and its counsel, **NO TELEPHONIC APPEARANCES PERMITTED for the Bank and its counsel**, shall appear at 3:00 p.m. on June 24, 2014, to respond and show cause why, with respect to the following:

A. Produce a copy of the loan modification agreement form to be signed by the Debtors in connection with the loan modification which is the subject of the present motion;

B. Provide an explanation and good faith business reasons for withholding the loan modification agreement form and not providing the bankruptcy court with all of the terms and conditions of the loan modification;

C. Show Cause why the court does not order Wells Fargo Bank, N.A. to provide debtor counsel with copies of the loan modification agreement form with an statement of modified loan payment terms which loan modification terms may be presented to the bankruptcy court with the statement of modified loan payment terms.

D. Show Cause why the court does not order Wells Fargo Bank, N.A. to pay $1,000.00 in compensatory corrective sanctions to Counsel for the Debtors for having to appear at two hearing in which the Motion to Approve Loan Modification could not be granted because Wells Fargo Bank, N.A. failed to provide Debtors' Counsel with a copy of the proposed Loan Modification Agreement or the loan modification agreement form to be used by the parties.

**IT IS FURTHER ORDERED** that written responses to the above matters and a copy of the Loan Modification Agreement or loan modification agreement form, which is properly authenticated by competent testimony, shall be filed and served on Counsel for Debtors, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office) on or before June 10, 2014. Replies, if any, to the written responses shall be filed and serve on or before June 17, 2014.

In addition to the Debtors, Debtors' Counsel of Record, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office), the Clerk of the Court shall serve a copy of this Order on:

A. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
101 N. Phillips Avenue
Sioux Falls, SD 57104

B. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
CSC-Lawyers Incorporating Service, Registered Agent
2710 Gateway Oaks Dr., STE 150N
Sacramento, CA 95833

C. Courtesy Copy to Counsel Filing Proof of Claim in this Case for Wells Fargo Bank, N.A.

David M. McGraw, Esq.
Law Offices of David M. McGraw
2890 N. Main Street

Walnut Creek, California 94597

D. Courtesy Copy to Counsel Appearing for Wells Fargo Bank, N.A. in Unrelated Cases

Austin P. Nagel,
Law Offices of Austin P. Nagel
111 Deerwood Road, Suite 350
San Ramon, California 94583

**15. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON MOTION TO MODIFY PLAN**
**CK-6 Catherine King 4-4-14 [93]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

**The court's tentative decision is to continue the hearing for the Motion to Confirm the Modified Plan to 3:00 p.m. on June 24, 2014.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that there has been no substitution of parties or suggestion of death filed by Debtor.

Additionally, the Trustee states that there is no current statement of income and statement of expenses on file. According to the Trustee's records, the most current statement of income was filed on 5-17-11, Dckt. 83, and the most current statement of expenses was filed on 5-18-11, Dckt. 84.

The Trustee also argues that the order confirming plan, Dckt. 87, reflects attorney fees $726.00 paid prior to filing and an amount of $2,774.00 to be paid through the plan. The proposed plan lists attorney fees as $1,000.00 paid prior to filing, and an amount of $2,226.00 to be paid through the plan.

Lastly, Trustee states that Debtor's modified plan proposes to reduce the commitment period from 60 months to 45 months. However, Trustee argues that Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Form B22C, indicates Debtors are above median income and the commitment period is 5 years. The Trustee has objected to the proposed loan modification.

The court having ordered Wells Fargo Bank, N.A. to appear on June 24, 2014The court denied the motion to approve the loan modification.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on June 24, 2014.

**16. 10-42317-E-13 MET-4 EDWARD HENSCHEL AND DENISE MARGLON Mary Ellen Terranella**

**MOTION TO MODIFY PLAN 4-10-14 [77]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the proposed plan may not be feasible. The proposed plan is contingent upon the court granting the debtors a permanent loan modification which capitalizes mortgage arrears. Trustee states that the debtors have not received a permanent loan modification from the creditor nor has a permanent loan modification been set for hearing or granted by the court. The debtors' have just entered into a trial loan modification.

Trustee also states that the payments made by Trustee under the confirmed plan are not authorized. The Trustee has disbursed $75,200.94 in class 1 monthly contract installments, $9,570.41 in class 1 mortgage arrears and $4,294.38 in class 2 dividends to creditor Americas Servicing Company which are not authorized by the proposed plan.

Lastly, the Trustee states that he is uncertain of the debtors'

income. The debtors filed exhibits in support of the motion. Exhibit A reports total income of $11,425.00. The debtor reports on Schedule I a total income of $6,187.00. The Trustee also notes Schedule I and Schedule J are not on the forms required by the Court.

**DEBTOR'S RESPONSE**

Debtors respond, stating that they will authorize the disbursements made by the Trustee to Americas Servicing Company in the Order Confirming. Debtor also argues that their residence is located on a parcel on which two residences are located. Robert Marglon, Denise Marglon's father, is a co-owner and co-obligor on the mortgage loan and the total income of $11,425 used to qualify the loan includes Mr. Marglon's income. Debtor states their income is accurately listed on Schedule I.

However, Debtors do not address that the proposed plan is contingent upon the court granting the debtors a permanent loan modification which capitalizes mortgage arrears. A motion to approve a permanent loan modification has not been set for hearing or granted by the court.

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

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

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

**17. 14-23317-E-13 MARIA OCHOA** **MOTION TO VALUE COLLATERAL OF**
**HDR-1 Harry D. Roth** **BEST BUY CO., INC**
**4-3-14 [10]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Best Buy, Inc., "Creditor" is granted.**

The Motion filed by Maria Torres Ochoa, "Debtor", to value the secured claim of Best Buy Co., Inc., "Creditor," is accompanied by Debtor's declaration. Debtor is the owner of a Apple Computer, "Asset." The Debtor seeks to value the Asset at a replacement value of $100.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Asset's title secures a purchase-money loan incurred in November 2012, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $830.83. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $100.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Maria

Torres Ochoa, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Best Buy Co., Inc., "Creditor," secured by an asset described as Apple Computer, "Asset," is determined to be a secured claim in the amount of $100.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $100.00 and is encumbered by liens securing claims which exceed the value of the asset.

**18. 11-24420-E-13 PGM-3** | **FRANK SCHRODEK AND JOANNE DE LA TORRE** | **Peter G. Macaluso** | **CONTINUED MOTION TO SELL 4-8-14 [74]**

**CONT. FROM 5-6-14**

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

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

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

---

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 28 days' notice was provided.

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

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 decision is to deny the Motion to Permit Debtor to Sell Property.**

**PRIOR HEARING**

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

Here, the Debtor proposes to sell their 2004 Peter Built truck. The sales price is $15,000.00 to an unidentified "bonafide buyer" who is not a party in interest.

**Trustee's Opposition**

The Chapter 13 Trustee opposes to the sell on the basis that Debtors have not provided any evidence of a contract for the sale, the terms of the sale, or the name of the buyer.

Moreover, Debtors propose to use the proceeds to pay off the amount owing to the creditor, approximately $7,482.07, and retain the remaining proceeds. However, Debtors have not identified the payee.

Additionally, Trustee claims that Debtors have not offered any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00. Debtors also claim $232.00 as exempt. The Trustee is concerned that Debtor may be proposing to keep non-exempt proceeds in a plan that proposes no guaranteed dividend to unsecured creditors.

**Debtor's Response**

Debtor responds stating that there is no written contract and that there is a cash offer for $15,000.00 to which time is critical. The Debtor states he has now amended his exemption with more than $10,000.00 in open "wild card" exemptions that can be applied to the truck. Counsel states that he has been in contact with lien holder P-Fund, Inc., formerly Shelter Financial Services, Inc. to assure receipt of title.

While the Debtor has provided argument that there is no written contract, there has been no evidence presented regarding the terms of the sale, the purchaser (and whether they are insiders). In their rush to get an order from the court, the Debtors have neglected to provide evidence to support the motion. Merely having counsel argue that everything is ok and give the Debtors the money is not sufficient. Merely saying that time is critical does not grant the Debtors and counsel exemptions from the basic pleading and evidence requirements.

Though counsel argues that the Debtors "have" amended their exemptions to claim an exemption in the proceeds of the sale, that does not make it a

fact. From the court's May 4, 2014 review of the docket, no such amendment appeared of record.

**SUPPLEMENTAL DECLARATION**

Debtor filed a supplemental declaration, stating that he sold his Peterbilt truck to Jonathan Breon for the sum of $15,000.00. Debtor states he agreed to put fuel in truck and change the oil, costing him $645.00 plus $45 permit and $15 title. Debtor states he sold the truck because he could not drive the truck in California after December 31, 2013 and he could not afford $18,000 - $20,000 to upgrade the truck to conform with California law. Debtor also states he had shoulder surgery on January 28, 2014 and he cannot go back to work yet. Debtor states he has tried to sell the truck for some time but it was difficult because it cannot be driven in California. Debtor states that it is worth more than it was sold for, but that he could not let it sit any longer because the batteries go bad and it was costing him $100 per month to store it.

**DISCUSSION**

The Motion filed in this case, which is rather cryptic, indicates that Debtors seek authorization for a prospective sale of the Peterbilt Truck to an unidentified buyer for $15,000.00 for unstated terms. Counsel for the Debtors expressly uses prospective language in the Motion, including,

A. "The sale is to...." (Not the sale <u>was</u> to....).

B. "The Debtors have a pending offer for $15,000.00." (Not, the Debtors received an offer of $15,000.00 and previously sold the Truck."

C. "Debtors wish to sell the trust and pay off the creditor in full." (Not, debtors have sold the truck and have paid off the creditor in full with the proceeds already received."

D. "The amount owed to the creditor is approximately $7,482.07." (Not, the amount paid creditor for its secured claim from the proceeds as $7,842.07.)

Motion, Dckt. 74.

The Debtors also provided testimony under penalty of perjury in support of the Motion. They so testified under penalty of perjury,

A. "We are financing a 2004 Peter Built with P-Fund/NorCal Kenworth and are requesting permission to sell."

B. "We owe approximately $7,482.07 and are planning to sell it for $15,000.00."

Declaration dated March 17, 2014, Dckt. 76. Clearly, the Debtors have testified that the Truck has not been sold, they understand that any proposed sale must be authorized by the court, and they are requesting such authorization to that they may then subsequently sell the Truck.

However, on May 13, 2014, the Debtor Frank Schrokek provides his

"Supplemental Declaration" in support of the present motion. He testifies under penalty of perjury that he did not wait for the court to authorize the sale of the Truck, but instead on April 17, 2014, chose to just sell the vehicle (without authorization). He further testifies that he sold the vehicle on April 17, 2014, because "I could not drive the truck in California After 12/31/13, as the air board won't allow any truck old [sic.] than 2005 to be driven in California." Dckt. 90.

In an apparent justification for knowingly and intentionally selling the Truck without court authorization, Mr. Schrokek states,

> "I had tried to sell the truck for some time, but not being able to drive it in California, it is very hard to sell it. It is worth a lot more than what it sold for. I could not let it sit any longer because in time seals and batteries go bad. It cost me almost $600 to find a buyer out of state."

*Id.*

This *post hoc* justification does not ring true. The hearing on the Motion to Sell (because the Debtors hid from the court the buyer and terms of the sale in the original motion) was continued to May 20, 2014. No evidence is presented that "seals and batteries would go bad" by the time for the hearing on May 6, 2014, set by the Debtors on their Motion.

Mr. Schrokek also states that "I thought it would be OK to pay truck off [sec.] and sell it. It didn't make sense to keep it, not being able to work or to drive it. It was costing me $100/month to store the truck." *Id.* Rather than showing a good faith error, the Debtor testifies that he did what he wanted to do, "Hang the darn bankruptcy laws. I do what I want and I say what the law will be." Unfortunately for the Debtors and their Counsel, Congress wrote the Bankruptcy Code and the Federal Judges apply the law to the facts of the case.

The court remains concerned regarding the unauthorized sale of estate property. Debtor admits that the property was sold for less than it was worth. Debtor did not offer any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00, but admit that it is worth more in his Declaration.

Conspicuously absent from the Supplemental Declaration is any testimony as to what efforts were made to engage a broker to properly market and sell the Truck. Instead, it appears that the Debtors make a favored, below market same to a person who is now identified as Jonathan Breon. If sold for less than fair market value, the Debtors have violated their fiduciary duty to the bankruptcy estate.

The Debtors proceeded to knowingly, intentionally, and willfully violate the Bankruptcy Code. The court does not know if the Debtors did so in violation of directions from their attorney or lied to him about what they were doing. Counsel's conduct in this case causes some concern. This is not the first time he has had clients who knowingly sold assets without obtaining authorization. In once case, the debtors did so after the court expressly denied a motion for authorization to sell. (The denial was without prejudice,

again because the motion and supporting evidence prepared by Counsel did not meet the minimum necessary to grant such motion.)

The court denies the Motion. The Debtors were not and are not authorized to sell the Peterbilt Truck, were not authorized to pay P-Fund proceeds from the unauthorized sale, and was not authorized to turn over property of the bankruptcy estate to Jonathan Breon.

In addition, the court orders the Debtors to deposit with the Chapter 13 Trustee, who shall hold such monies until further order of the court, the $15,000.00 of sales proceeds on or June 6, 2014. If The Debtors, as the fiduciaries of the bankruptcy estate, cannot deposit the $15,000.00 with the Chapter 13 Trustee because P-Fund, Inc. refuses to return the unauthorized payment, the Debtors shall commence shall proceeding as appropriate to recover the unauthorized disbursement.

The Debtors, as the fiduciaries of the estate, shall also recover possession of the Peterbilt Truck from Jonathan Breon on or before June 6, 2014. If Jonathan Breon refuses or fails to deliver possession and control of the Peterbilt Truck to the Debtor, in California, on or before June 6, 2014, the Debtors shall commence such proceedings as are appropriate to recover possession of the Truck and assert claims against Jonathan Breon for wrongfully being in possession of this property of the bankruptcy estate.

The court shall also issue orders to show cause as to why it should not refer the conduct of the Debtors and Counsel for the Debtors to the United States District Court for imposition of monetary punitive sanctions in the amount of not less than $15,000.00 for the Debtors, jointly and severally, and not less than $5,000.00 to be paid by Counsel for the Debtors. The District Court can determine the extent to which Counsel was aware of the Debtors' intention to violate the Bankruptcy Code and whether the incomplete pleadings were mere "sloppy practices" or an intentional pleading act to mislead the court and cover-up the intended misconduct of the Debtors.

At this juncture, the court leaves it to the Chapter 13 Trustee, U.S. Trustee, and other parties in interest to determine if this case should continue as a Chapter 13 case, be converted to Chapter 7, be dismissed with prejudice, or dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Permit Debtor to Sell the 2004 387 Peterbilt Truck, VIN ending in 0749 is denied.
>
> **IT IS FURTHER ORDERED** that Frank P. Schrodek and Joanne De La Torre, and each of them, as the Chapter 13 Debtors who

are the fiduciaries of the bankruptcy estate, to deposit with the Chapter 13 Trustee, who shall hold such monies until further order of the court, $15,000.00 which represents the sales proceeds on or June 6, 2014. If the Debtors, as the fiduciaries of the bankruptcy estate, cannot deposit the $15,000.00 with the Chapter 13 Trustee because P-Fund, Inc. refuses to return the unauthorized payment, the Debtors shall commence shall proceeding as appropriate to recover the unauthorized disbursement.

**IT IS FURTHER ORDERED** that Frank P. Schrodek and Joanne De La Torre, and each of them, as the Chapter 13 Debtors who are the fiduciaries of the bankruptcy estate, shall recover possession of the 2004 387 Peterbilt Truck, VIN ending in 0749 from Jonathan Breon, or any transferee or nominee thereof, on or before June 6, 2014. If Jonathan Breon, or any transferee or nominee, refuses or fails to deliver possession and control of the Peterbilt Truck to the Debtor, in California, on or before June 6, 2014, the Debtors shall commence such proceedings as are appropriate to recover possession of the Truck and assert claims against Jonathan Breon, and any transferee or nominee, for wrongfully being in possession of this property of the bankruptcy estate.

The court shall also issue orders to show cause as to why it should not refer the conduct of the Debtors and Counsel for the Debtors to the United States District Court for imposition of monetary punitive sanctions in the amount of not less than $15,000.00 for the Debtors, jointly and severally, and not less than $5,000.00 to be paid by Counsel for the Debtors.

**19. 11-24420-E-13 FRANK SCHRODEK AND JOANNE DE LA TORRE**
**PGM-2 Peter G. Macaluso**
**MOTION TO MODIFY PLAN**
**4-8-14 [68]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the proposed treatment of Class 2 creditor P-Fund Inc. The creditor is included in Class 2 of the confirmed plan with a secured claim of $14,332.00 at 4.5% interest. The Trustee has disbursed $6,856.87 to the creditor for principal payments leaving a balance of $7,475.13 to be paid plus interest. The debtor is proposing to sell the asset directly outside the plan, payoff the remaining debt and keep any proceeds. The Debtors filed and set for hearing on May 6, 2014 a motion to sale to which the Trustee has objected.

Debtor filed a reply, stating that he has proposed a cash-sale to a third party because the vehicle cannot be driven in California past December 31, 2013 absent special modification of the emissions and due to a shoulder injury that the debtor sustained. Debtor states that the motion to sell has been continued for more information regarding the sale.

The court has denied the Motion to Sell. As addressed in detail in

the ruling on that motion, the court found that the motion seeking authorization to sell was a sham to try and cover-up the Debtors' willful and intentional violation of the Bankruptcy Code by selling an asset without obtaining authorization from the court and then using the money to pay a creditor (possibly multiple creditors or themselves) outside payments permitted under the confirmed Chapter 13 Plan in this case.

In addition to the grounds identified by the Trustee, the Debtors are not proceeding in good faith in proposing the Modified Chapter 13 Plan. They have not prosecuted this case and performed their fiduciary duties to the estate in good faith.

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

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

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

**20. 13-35420-E-13 LATASHIA RICHARDSON MOTION TO CONFIRM PLAN**
**RJ-1 Richard L. Jare 4-4-14 [50]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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.**

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 April 2, 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.

**21. 14-23523-E-13 ASHKOK CHAND**
**AHL-1 Alexander H. Lubarsky**
**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.**
**5-5-14 [19]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.**

The Motion to Value filed by Ashok Chand, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5244 Fitzwilliam Way, Sacramento, California, "Property." Debtor seeks to value the Property at a fair market value of $135,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $135,325.00. Creditor's second deed of trust secures a claim with a balance of approximately $80,435.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ashok Chand, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5244 Fitzwilliam 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 $135,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property which is subject to Creditor's lien.

**22. 13-34624-E-13 DEBRA RANDELL** — **CONTINUED MOTION TO CONFIRM PLAN**
**MWB-2 Mark W. Briden** — **3-5-14 [36]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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Pursuant to this Court's Order After Hearing, dated May 5, 2014, the Continued Motion to Confirm First Amended Plan is denied and this **item is removed from the calendar**. Dckt. 60.

**23. 14-21926-E-13 JJW-1 RONALD/JEANNIE AHLERS Scott A. CoBen**

**OBJECTION TO CONFIRMATION OF PLAN BY SIERRA CENTRAL CREDIT UNION**
**4-6-14 [19]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney and Chapter 13 Trustee on April 6, 2014. By the court's calculation, 44 days' notice was provided. 14 days' notice is required.

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. At the hearing ----------.

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

Creditor Sierra Central Credit Union ("Creditor") opposes confirmation of the Plan on the basis that the plan values Sierra Central Credit Union's claim in an amount less than the amount claimed which is not allowed 11 U.S.C. § 1325 (a)(5)(B)(ii). The Plan incorrectly values the claim of Sierra Central Credit Union at $9,300.00. The true amount of the claim is $9,890.40 as stated on its proof of claim filed on or about March 11, 2013.

Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide the ongoing note installments on the vehicle. See 11 U.S.C. §§ 1322(b)(2), (b)(5) &

1325(a)(5)(B). Because it fails to provide for the full payment of the claim, the plan cannot be confirmed.

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

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

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

**24. 14-21926-E-13 NLE-1 RONALD/JEANNIE AHLERS Scott A. CoBen**

**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 4-16-14 [25]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. At the hearing ----------.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor is $4,905.00 delinquent in plan payments. Debtor has paid $0.00 into the plan to date. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also argues that the plan fails to provide for secured claim of Internal Revenue Service, filed on April 9, 2014 in the amount of $195,500.00, Proof of Claim No. 7-1. While treatment of all secured claims may not be required under II U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

Additionally, Trustee argues that the plan fails to fully provide for the priority claim of the Internal Revenue Service. The Debtor's Plan fails to fully provide for the priority claim of the Internal Revenue Service filed on April 9, 2014 in the amount of $211,615.90. The Plan provides for the Internal Revenue Service as a priority debt in Class 5 in the amount of $64,600.00.

The Trustee also argues that the plan is not the debtor's best effort. The Debtor is over the median income and proposes plan payments of $4,905.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor lists the Class 4 mortgage payment owed to Nationstar Mortgage in the amount of $1,713.00 on Schedule J, however, Trustee states that the Debtors admitted at the First Meeting of Creditors held on April 10, 2014 that the Class 4 mortgage payment was actually $1,388.00 per month, leaving $325.00 per month to be paid into the Plan.

The Trustee also notes that while Form 22C shows a negative $1,496.88 on Line 59, this includes a claim of the mortgage payment, and $19,078.17 of business expenses which are not itemized, and when the Debtor itemizes current business expenses for Schedule I, this includes $1,000 in estimated federal and state income taxes which are on Form 22C elsewhere. The Statement of Financial Affairs, Question I, reflects $570,000.00 of gross receipts from the business in 2013 and $569,000.00 in 2012, which would average $47,458.33 per month, far more than the $26,407.09 claimed on Form 22C, Line 3.

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

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

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

cause appearing,

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

**25. 14-21926-E-13 RONALD/JEANNIE AHLERS**
**PP-1 Scott A. CoBen**

**OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR U.S. BANK, N. A.**
**4-16-14 [29]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney and Chapter 13 Trustee on April 6, 2014. By the court's calculation, 44 days' notice was provided. 14 days' notice is required.

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. At the hearing ----------.

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

Creditor U.S. Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that it filed a claim in the amount of $93,250.66, secured by inventory, equipment, accounts receivable, and other personal property assets. There has been no objection to the claim nor any motion to value the collateral. Debtors have not surrendered and do not propose to surrender the collateral. The Plan nevertheless treats U.S. Bank's claim as unsecured and proposes to pay U.S. Bank nothing at all.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income

that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the 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 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.

**26. 14-20327-E-13 NLE-1** | **JAMES/CHARLI BARTEAU** **Douglas B. Jacobs** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS** **4-16-14 [35]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
---

The Chapter 13 Trustee having filed a "Withdrawal" for the pending Objection to Debtors' Claim of Exemptions, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Debtors' Claim of Exemptions, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Debtors' Claim of Exemptions**.

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.

An Objection to Debtors' Claim of Exemptions having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Debtors' Claim of Exemptions is dismissed without prejudice.

**27. 14-21728-E-13 NETANE VILINGIA** **OBJECTION TO CONFIRMATION OF**
**NLE-1 Pro Se** **PLAN BY DAVID CUSICK**
**4-16-14 [27]**

**CASE DISMISSED 4/18/14**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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The case having previously been dismissed, the Objection is dismissed as moot.

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

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

**28. 09-38433-E-13 GARY/SHERYL RAWLINSON** **CONTINUED MOTION TO MODIFY PLAN**
**RLC-2 Stephen M. Reynolds** **3-24-14 [101]**

**CONT. FROM 5-6-14**

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

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

**Below is the court's tentative ruling.**
---
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2014. By the court's calculation, 43 days'

notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the proposed plan does not provide for the following creditors who were provided for in the plan confirmed December 20, 2009:

> Class 2 Creditor: Carmax Auto Finance (which the Trustee states he has disbursed $19,464.55 to creditor)
>
> Class 3 Creditors: BMW Financial Services (no claim filed); BMW Financial Services (no claim filed); Chase (no claim filed); Chase (Court Claim No. 11); Hilton Grand Vacation Club (no claim filed).

The Trustee also states that the Debtor's proposed plan adds the following creditors who are not in the Debtor's schedules and for whom a claim has not been filed in this case:

> Class 4 Creditors: Bank of America (paid in sale); Bank of America (paid in sale)
>
> Class 5 Creditors: Board of Equalization (sales tax); Franchise Tax Board (income tax) and Internal Revenue Service (income tax)

Additionally, the Trustee is uncertain of Debtor's ability to make the payments under the plan. The Trustee states the Debtor is proposing a monthly plan payment of $1,750.00. The Debtor and former spouse, who has applied for a hardship discharge, filed amended Schedule I and J, indicating his monthly income is $8,770.10 and his monthly expenses are $9,844.21.

The Debtor's motion states he is remarried and his current spouse's income is used to pay a portion of the household expenses. However, no information is given about the current spouse's income or the expenses paid by her. The Trustee states there are many changes on Debtor's Schedule J from the previous but no explanations have been provided.

Lastly, the Trustee states that Debtor incorrectly states that $179,711.16 has been paid for the period of September 2009 to March 2014, but the correct about is $181,403.50.

**DISCUSSION**

The Trustee's objections are well taken, for which the court takes a

careful review of the proposed Chapter 13 Plan. This case was filed on August 28, 2009. The sixtieth month of the plan in this case will be August 2014 (four months from now). For the months of April - August 2014 the Debtor will make monthly plan payments of $1,750.00.

Clearly the Debtors' situation has changed dramatically during the five years of this case. On a personal level, they have obtained a divorce and Mr. Rawlinson has remarried. Sheryl Brewer (formerly Sheryl Rawlinson), the co-Debtor, testifies that she is currently unemployed and anticipates it taking several months for her to find employment. Declaration, Dckt. 104.

In his declaration, Mr. Rawlinson testifies that he will fund the plan going forward, not expecting any contribution from Sheryl Brewer, confirming that Ms. Brewer lost her job of 21 years. Declaration, Dckt. 105.

The confirmed Chapter 13 Plan in this case required that the plan payments for the period from June 2010 through the end of the plan were to be $3,337.00 a month. Order, Dckt. 46. The Confirmed Plan provides for a dividend of not less than 25% for creditors holding general unsecured claims. Chapter 13 Plan, Dckt. 28.

In addressing the Trustee's objections, the Debtor has stated that the purported creditors and claims listed in Classes 4 and 5 of the proposed First Modified Chapter 13 Plan were listed in error and are not creditors in this case. Errata to First Modified Plan, Dckt. 113. The order confirming the plan will amend the proposed plan to delete these claims.

As for the Class 3 claims provided in the prior plan, five have been omitted. The court notes that BMW Financial Services has filed two proofs of claim in this case, Proof of Claim No. 17 (general unsecured claim for $13,878.85) and Proof of Claim No. 18 (general unsecured claim for $14,596.80). The claims are asserted to be based on two leases. Both Proofs of Claim include attachments showing the unsecured claim as having been computed after the vehicles were recovered, sold, and the proceeds applied to the lease obligations.

The secured claim of "Chase Home Finance" (whomever that may be), Proof of Claim No. 11, is provided for under the existing confirmed Chapter 13 Plan for Class 3 "Surrender" treatment. The court will not confirm a plan which would appear, on its face, to "reinstate" the automatic stay. Confirmation of the First Modified Plan shall include an amendment providing for the Chase Home Finance claim (Proof of Claim No. 11) as a Class 3 claim, with the amendment stated in the order confirming the plan.

The same is true for Hilton Grand Vacations Club, which has disappeared from the First Modified Plan. The plan terms are amended to provide for the claim, if any, of Hilton Grand Vacations Club as a Class 3 claim, with the amendment stated in the order confirming the plan.

Finally, the financial information provided by the Debtors about the ability to complete the last four months of the plan is spotty at best. The Declaration of Mr. Rawlinson states that an 82% dividend has actually been provided for creditors with general unsecured claims in this case, and that all priority and secured claims have been paid.

However, Amended Schedule I does not list Mr. Rawlinson's current wife's income, but only Sheryl Brewer's (his ex-wife) unemployment insurance income. Taken on its face, Mr. Rawlinson does not have sufficient income to afford the proposed payments of $1,750.00 a month, showing monthly net income of only $875.89 on Amended Schedule J. Dckt. 106 at 7-9

In the Motion it is alleged that Mr. Rawlinson's current wife has monthly income of "approximately one-third of Mr. Rawlinson's income. Motion, Dckt. 101. No evidence of this fact is present, merely the arguments of counsel. If this is deemed an admission, then Mr. Rawlinson's family unit has an additional $4,000.00 a month in income. It appears that through Amended Schedule J that Mr. Rawilson is attempting to deduct all of the household expenses from his income, leaving his current wife living "expense free," other than having to "kick in" $845.00 a month to fund the First Modified Plan.

Some of the monthly expenses which Mr. Rawilson seeks to pay solely from his income are:

A. Electricity and Natural Gas.....$ 600.00

B. Food and Household Supplies.....$ 900.00

C. Transportation.....$ 367.00

D. Entertainment, Recreation.....$ 615.00

E. Vehicle Insurance.....$ 133.00

F. Two Car Payments Totaling.....$ 690.95

G. Monthly Mortgage.....$2,069.36

H. Home Maintenance.....$ 700.00

Amended Schedule J, Dckt. 106 at 7-9.

From the evidence presented by Mr. Rawlinson, there are at least $6,075.31 in current month expenses his current wife should be sharing in. Assuming that her income is one-third of Mr. Rawlinson, it would not be unreasonable for her to contribute one-third of this amount, or $2,025.10.

With Mr. Rawilson's current spouse paying her reasonable share of expenses, his projected disposable income increases to $2,900.00 a month (the $875.89 net month income from Amended Schedule J + the reasonable contribution for expenses from Mr. Rawilson's current wife).

Mr. Rawlinson has hidden from the court his current wife's actual income and has failed to provide any testimony about that income. The court does not believe that his failure to provide such testimony is mere "inadvertence." Rather, the court infers that this high income debtor has done so to try and avoid paying his actual projected disposable income for the final five months of the Chapter 13 Plan.

Based on the evidence presented (there being no evidence of Mr.

Rawlinson's current wife's income) the Modified Plan is not feasible. If the statement that the current wife's income is one-third of Mr. Rawlinson's, then the Debtors have significantly under-funded the plan.

In addition to the First Modified Plan not being feasible based on the evidence presented, the Debtors have demonstrated that the First Modified Plan has not been presented in good faith. Mr. Rawlinson wants the benefit of Sheryl Brewer having lost her job to decrease the monthly plan payment, but seeks to hide his actual family household income which has increased. Further, he attempts to divert money to pay his current wife's share of the household expenses, asking creditors to subsidize their lifestyle.

Mr. Rawlinson is a very fortunate individual, having $14,279.97 a month in gross income from wages and Social Security benefits. In addition, his household has additional income of one-third his earnings. This is significantly more than most Chapter 13 Debtors. However, he has demonstrated that he is not prosecuting this case in good faith, attempting to squeeze a few extra "bucks" from creditors. For the want of paying possibly an additional $6,000 to $7,000 in dividend to creditors holding general unsecured claims the Motion is denied. Quite possibly Mr. Rawlinson has so impugned his credibility that he cannot, 56 months into the case, modify the plan to provide for paying his truthful, accurate and honest projected disposable income into the case.

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

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

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

**29. 09-38433-E-13 GARY/SHERYL RAWLINSON** **CONTINUED MOTION FOR HARDSHIP DISCHARGE**
**RLC-1 Stephen M. Reynolds** **2-6-14 [93]**

**CONT. FROM 5-6-14**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditor, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Hardship Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter.

**The court's decision is to deny the Motion for Hardship Discharge.**

**MARCH 11, 2014 HEARING**

At the hearing the court and parties addressed that the motion for hardship discharge should be addressed in connection with a motion to modify the plan given that there are two Debtors in this case (who are now divorced).

The court has denied the motion to confirm.

**REVIEW OF MOTION**

Debtor Shreyl Brewer, formerly Sheryl Rawlinson, ("Movant") seeks a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtor state that during this case she and co-debtor Gary Rawlinson separated and divorced,

with Mr. Rawlinson remarrying. Movant states that she was laid off by her employer on December 31, 2013 as part of a reduction in force. Movant states it is unclear when she will obtain new employment and will not be able to make the plan payments she was making before (half of the plan payment).

**TRUSTEE'S OPPOSITION**

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

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

**DISCUSSION**

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Hardship Discharge filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice. In any further Motion for hardship discharge Shreyl Brewer, formerly Sheryl Rawlinson, shall address

whether the court can grant one debtor a hardship discharge in this case, or if Ms. Brewer must first have this joint case split into two separate cases.

**30. 13-36233-E-13 MARK/EVELINA PANANGANAN — MOTION TO CONFIRM PLAN**
**JLB-2 James L. Bianchi — 4-8-14 [50]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

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

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

**The court's decision is to continue the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on June 3, 2014.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the plan on the basis of an attorney fee conflict. Section 2.06 of Debtors amended plan indicates that attorney fees of $3,500.00 have been paid prior to filing, and additional fees of $3,500.00 shall be paid through the plan. This conflicts with Debtors original plan filed December 31,2013, indicating that total fees were $3,500.00, which were paid in full prior to filing.

The Trustee also argues that Debtor may not be able to make the plan payments required under 11 U.S.C. §1325(a)(6). Debtors Declaration states that "Payments to my church remain at $650.00 per month". Debtors Schedule J does not disclose any charitable contributions on line 10. The Statement of Financial Affairs does not disclose any gifts at item #7. Debtors 2012 federal tax return listed gifts to charity by cash or check as $5,616.00 (an average of $468.00 per month). Debtors 2013 federal tax return lists gifts to charity by cash or check as $10,130.00 (an average of $844.16 per month). The Trustee is not aware of any amendment to Schedule J to date, and the net income of $217.00 given in the Debtors Declaration is not accurate, given the evidence of charitable contributions each month.

Lastly, Trustee argues that Debtors' plan relies on the Motion to Value Collateral of J.P. Morgan Chase. The Motion was continued to June 3,

2014. If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

**DEBTOR'S RESPONSE**

The Debtor states that the attorney fee was a typo and any reference to an additional attorney fee is removed from the proposed order confirming the plan.

The Debtor also states that post-filing changes to income and expenses are presented in the Declaration of Mr. Panaganan, which arise from their reducing payroll deductions to eliminate a tax refund and stretching their car payments over the 60 month life of the plan. Debtor argues that considering the post-filing changes in income and expenditures, the proposed plan payment of $217 per month is feasible.

Lastly, the Debtor states that the motion to value the second lien on the property was continued to June 3, 2014 and that this motion should be continued to that date as well.

The plan relying on the pending motion to value, the court continues the hearing to June 3, 2014.

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 continued to 3:00 p.m. on June 3, 2014.

**31. 14-24035-E-13 KAREN HOWARD**
**MS-1 Mark Shmorgon**

**MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE**
**4-21-14 [8]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 21, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Internal Revenue Service, "Creditor," is denied without prejudice.**

The Motion filed by Karen Howard, "Debtor," to value the secured claim of Internal Revenue Service, "Creditor," is accompanied by Debtor's declaration. Debtor asserts that she is the owner of "various personal property," and seeks to value these assets at a replacement value of $4,681.03 as of the petition filing date.

However, the court has no explanation or evidence as to these "various personal property" assets. No assets are listed in the motion or declaration and no details as to this property have been provided. Therefore, the court cannot value the secured claim in assets to which it has no evidence or explanation. 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 Karen Howard, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

**32. 14-21236-E-13 DIOSDADO MATULAC — MOTION TO CONFIRM PLAN**
**EJS-1 Eric John Schwab — 3-31-14 [20]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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.**

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 March 6, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**33. 12-40539-E-13 JIMMIE/LORA MUNDAY** **OBJECTION TO CLAIM OF GREEN**
**NLE-2 Anand B. Jesrani** **TREE SERVICING, CLAIM NUMBER 6**
**3-27-14 [53]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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Local Rule 3007-1(c)(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, respondent creditor, and Office of the United States Trustee on March 27, 2014. By the court's calculation, 54 days' notice was provided. 44 days' notice is required.

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

**The Objection to Proof of Claim number 6 of Bank of America, N.A., filed by Green Tree Servicing, LLC is sustained and the claim is disallowed in its entirety.**

The Proof of Claim at issue, listed as claim number 6 on the court's official claims registry, asserts $107,346.94 claim. The Trustee objects to the Proof of Claim on the basis that it was not timely filed. *See* Fed. R. Bankr. P. 3002(c).

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

On May 6, 2014, Creditor Bank of America, N.A. withdrew its Proof of claim No. 6 in this matter. Notice of Withdrawal filed May 6, 2014.

The deadline for filing a Proof of Claim in this matter was April

10, 2013. The creditor's claim was filed February 25, 2014.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Green Tree Servicing, on behalf of Bank of America, N.A. filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 6 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

**34. 14-21042-E-13 PGM-1** | **STACEY WHITAKER** / **Peter G. Macaluso** | **MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE** / **4-14-14 [20]**

**Final Ruling:** No appearance at the April 14, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 14, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Carmax Auto Finance, "Creditor" is granted.**

The Motion filed by Stacey Whitaker, "Debtor," to value the secured claim of Carmax Auto Finance, "Creditor," is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Nissan Murano, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 31, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,435.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $8,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Stacey Whitaker, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Carmax Auto Finance, "Creditor," secured by an asset described as 2006 Nissan Murano, "Vehicle," is determined to be a secured claim in the amount of $8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

**35. 14-21542-E-13 NATALIA RINKER** **MOTION TO CONFIRM PLAN**
**SDH-1 Scott D. Hughes** **3-26-14 [24]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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.**

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 March 26, 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.

**36. 12-33143-E-13 VERLYNE SMITH — MOTION TO MODIFY PLAN**
**PLG-4 Chelsea A. Ryan — 4-7-14 [57]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 7, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**37. 09-31644-E-13 JAMES/ROBIN FOURET — MOTION TO VALUE COLLATERAL OF UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA**
**SDB-6 W. Scott de Bie — 4-18-14 [104]**

**Final Ruling:** No appearance at the May 15, 2015 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 18, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of United Guaranty Residential Insurance Company of North Carolina, "Creditor," is granted.**

The Motion to Value filed by James and Robin Fouret, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1406 Shadowpine Court, Roseville, California, "Property." Debtor seeks to value the Property at a fair market value of $315,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut.*

*Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $326,681.00. Creditor's second deed of trust secures a claim with a balance of approximately $97,155.20. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by James and Robin Fouret, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of United Guaranty Residential Insurance Company of North Carolina secured by a second in priority deed of trust recorded against the real property commonly known as 1406 Shadowpine Court, Roseville, 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 $315,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property which is subject to Creditor's lien.

**38. 14-22552-E-13 JAMES/OCTAVIA BOHANON**
**MMP-2 Michele M. Poteracke**

**CONTINUED MOTION TO EXTEND AUTOMATIC STAY**
**3-28-14 [18]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(3) Motion - Final Noticed Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 11 days' notice was provided.

The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the hearing for supplemental briefing. No opposition to the Motion was filed.

**The court's tentative decision is to grant the Motion to Extend Automatic Stay.**

**PRIOR HEARING**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case.

However, the Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

> Debtors, JAMES BOHANAN and OCTAVIA BOHANON, hereby move the Court for an Order Extending the Automatic Stay in this case pursuant to 11 U.S.C. §362( c). The motion is based on the Declaration of Debtor, James Bohanon, and on the schedules and plan filed in this matter on March 19, 2014.

Motion, Dckt. 18.

The Motion to Extend the Automatic Stay does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely request that the court reference the Declaration of Debtor and the schedule and plan filed in this matter. This is not sufficient for the relief requested.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*,

550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

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

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

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

*Weatherford*, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual

allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

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

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

**CONSIDERATION OF MOTION BASED ON POSSIBLE HARM TO DEBTORS**

This represents one of those rare situations where the failure to comply with the basic pleading rules in federal court could have disastrous consequences for a debtor and debtor's attorney. In this case the Debtor testifies that he and his wife are more than 70 years old and suffering from health issues which preclude them from working. The Debtors' prior case was premised on the Debtor being able to continue working.

If the court were to deny the Motion due to the defective pleading, the automatic stay would terminate the Debtors fear they would be "hounded" by creditors. A review of Schedule F lists general unsecured claims of just under $100,000.00 and $43,004.48 in priority tax claims. Dckt. 1.

The court also notes that the Debtors prior bankruptcy case was not dismissed due to a default in payments, but because the Debtors failed to

pay their post-petition income taxes for 2010, 2011, and 2012. Bankr. E.D. Cal. 10-20203, Civil Minutes, Dckt. 103; Motion to Dismiss or Convert Case, Dckt. 88.

The court will consider the Motion on its merits, addressing the defective pleadings with counsel in connection with the final hearing.

**REVIEW OF MOTION**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 10-20203-B-13J) was dismissed on October 23, 2013, after Debtors failed to fully pay their income tax liabilities for the tax years 2010 through 2012, a material default with respect to the confirmed plan. *See* Order, Bankr. E.D. Cal. No. 10-20203-B-13J, Dckt. 104, October 23, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that this case is different than the last because they have changed their tax withholding and taxes are now being withheld from their social security and pension income. Debtor testifies that with the elimination of outside employment, the problem of calculating their on-going tax liability will be solved so that the same problem as the prior case will not reoccur.

While the explanation does not fully address why and how they let the prior case be dismissed, it is sufficient for purposes of issuing an interim order extending the automatic stay. Debtor asserts that she will not have to replace her hot water heater, stove or heater unit during this

bankruptcy, which was why she could not afford plan payments previously. Debtor now asserts that she has sufficient income that will allow her to perform under the new Chapter 13 plan.

**APPEARANCE AT CONTINUED HEARING**

On or before April 11, 2014, counsel for the Debtors shall file and serve a Supplement to the Motion which states with particularity all of the grounds upon which the requested relief is based and any supplemental supporting evidence. Counsel shall not file an "Amended Motion."

**SUPPLEMENTAL DOCUMENTS**

Debtor filed a supplemental document stating that the difference between the prior case and now is in Debtors' knowledge and understanding, and now they have additional tools to help them stay on top of the tax problem that caused their default in the prior case:

a. Debtors' incomes have stabilized at a lower level, with less available earned income in addition to social security and pensions;

b. This stabilization in income permits greater anticipation and calculation of on-going future tax liability so that the post-petition years will not see a recurrence of the same problem as the prior case;

c. Debtors have both increased the withholding from pensions and social security postpetition based on their anticipated gross taxable income for 2014;

d. Debtors have committed to a plan of semi annually reviewing the status of their income and tax withholding to make further adjustments if needed to ensure against incurring post-petition tax liability during the term of this case;

e. And, Debtors have been educated and provided with coupons to make estimated tax payments as their review of income versus withholding calls for additional tax payments to avoid incurring post-petition tax debt.

Debtor states that they have done all they can do, given their ages and earnings capacity to ensure that the problems of the prior case are not repeated. Debtor argues that they are correcting the errors of the past case and in the present case, dedicating all of their disposable income to the plan payments to maximize the return to creditors. Debtor asserts that the plan has been offered in good faith and should be confirmed.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

**39. 14-20056-E-13 TSB-1 — THOMAS/SUSAN CLAYTON — Peter G. Macaluso — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 2-13-14 [30]**

**Final Ruling**: The Chapter 13 Trustee having filed a "Withdrawal of Trustee's Objection to Confirmation of the Plan" for the pending Trustee's Objection to Confirmation of the Amended Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Trustee's Objection to Confirmation of the Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's** Objection to Confirmation of the Debtors' Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Trustee's Objection to Confirmation of the Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Objection to Confirmation of the Plan is dismissed without prejudice.

**40. 12-22061-E-13 STEVE LOVELACE**
**DPC-1 Julius J. Cherry**

**OBJECTION TO CLAIM OF WESTMARK CREDIT UNION, CLAIM NUMBER 4**
**3-10-14 [22]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Debtor, Debtor's Attorney, the Respondent Creditor, Respondent's Creditor's attorney, and Office of the United States Trustee on March 10, 2014. By the court's calculation, 71 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

**The Objection to Proof of Claim number 4-1 of Westmark Credit Union is sustained and the claim is a general unsecured claim.** No appearance required.

David P. Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Westmark Credit Union, Proof of Claim No. 401 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $11,281.36. Objector objects to the allowance of the claim on two grounds: first, that Creditor Westmark Credit Union does not provide documents showing that the claim is secured as required by Federal Rule of Bankruptcy Procedure 3001(d). Second, Debtor's Schedule A shows that Debtor does not own any real property.

Trustee states that the subject proof of claim is filed as secured, but is not provided for as secured under the plan. Unsecured claims will receive a dividend under Debtor's Plan.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that

the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

State law controls the validity and effect of liens in the bankruptcy context. Diamant v. Kasparian (In re S. California Plastics, Inc.), 165 F.3d 1243, 1247 (9th Cir. 1999). Under California law in order to create a judgment lien on real property, and thereby secure a previously unsecured debt, the judgment creditor must record an abstract of a judgment with the county recorder. Cal. Civ. Proc. Code § 697.310. To create a judgment lien on personal property, the judgment creditor must file a notice of judgment lien with the office of the Secretary of State. Cal. Civ. Proc. Code § 697.510.

Proof of Claim No. 4-1 on the claims registry asserts that the basis for the claim is an "abstract/judgment" for $11,281.36. However, it appears that the judgment, has not been perfected because as abstract of judgment has not been recorded with the county recorder. The Claimant attaches a "Default Judgment" and "Order of Default" from a court in the Bonneville County Court in Idaho as supporting documentation to the claim, but Claimant does not attach a recorded abstract of judgment, creating a judgment lien that attached to the Debtor's property. Therefore, the claim should be classified as a general unsecured claim.

The court has not been presented with any evidence that either of these procedures has been followed by Creditor. Therefore, the Creditor's claim is not perfected under California law, and is a general unsecured claim.

Based on the evidence before the court, the creditor's claim is disallowed as an unsecured claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Westmark Credit Union, Creditor filed in this case by David Cusick, Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 4-1 of Westmark Credit Union is sustained, and the claim is disallowed as a secured claim and is a general unsecured claim in this bankruptcy case.

**41. 14-21662-E-13 RS-1 — ANN-MARIE SCOTT — Richard L. Sturdevant — MOTION TO VALUE COLLATERAL AND TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC. — 5-6-14 [34]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 6, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value secured claim of Beneficial California, Inc., "Creditor," is granted, and creditor's secured claim is determined to be $0.00.**

The Motion to Value filed by Ann-Marie Scott, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 154 Normandy Drive, Vacaville, California, "Property." Debtor seeks to value the Property at a fair market value of $293,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust held by WMC Mortgage Corpt secures a claim with a balance of approximately $394,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $103,9866.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ann-Marie Scott, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Beneficial California, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 154 Normandy Drive, Vacaville, 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 $293,000.00 and is encumbered by senior liens securing claims in the amount of $394,000.00, which exceed the value of the Property which is subject to Creditor's lien.

**42. 14-21662-E-13 ANN-MARIE SCOTT**
**NLE-1 Richard L. Sturdevant**

**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
**4-16-14 [20]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing **----------**.

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value the Secured Claim and because Trustee asserts that the Plan is not the Debtor's best effort.

First, Trustee argues that the Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Beneficial/HFC, but Debtor has not filed a motion to value the secured claim of this creditor.

The docket reflects that subsequent to Trustee's filing of the instant objection, Debtor filed a Motion to Value the Collateral of Beneficial California, Inc. on March 6, 2014, which is also set for this

hearing date. Dckt. No. 24. The filing of this Motion resolves this portion of the Trustee's objection.

Second, it appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of 44,063.57 for 36 months with a 1% dividend to unsecured creditors, which totals $1,705.00. Form B22C reflects negative disposable income on Line #59 in the amount of $710.02; however, based on Trustee's review of Form B22C, Line #59 is a positive amount of $373.00. Trustee has revised the following lines on Form 22C:

> Line #48(b) Other payments on secured claims in the amount of $1,088.33, however this debt is listed in Class 2 to be valued at $0.00, therefore the Debtor is not entitled to deduct this expense.

The Plan term should be 60 months, as the Debtor is over the median income.

Trustee's objection to confirmation of the Plan, on the basis that the plan may not be Debtor's best efforts, is well taken. 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.

**43. 14-21964-E-13 DAVE/MICHELLE SMITH** **OBJECTION TO CONFIRMATION OF**
**NLE-1 James V. Phelps** **PLAN BY DAVID CUSICK**
**4-16-14 [20]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is dismissed as moot and confirmation is denied.**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan is causing unfair discrimination to unsecured creditors, and that the plan is not the Debtors' best effort.

Debtors are proposing to pay the 2004 Monarch Motorhome in Class 4 of the Plan in the amount of $541.39. Debtors have failed to indicate the date that the claim was incurred on Schedule D, and the length of the contract. Schedule D reflects that an unsecured portion of $25,174.38 exists, so if the claim can be valued, Debtors are paying a significant unsecured claim by paying the claim directly. Debtors are proposing a 1% dividend to general unsecured creditors, which totals $290.75.

Debtors are proposing to pay Tri Counties Bank's Third Deed of Trust in Class 4 of the Plan in the amount of $150.00 per month, and it does not appear that any security exists and therefore this debt should be listed in Class 2, and a Motion to Value the Secured Claim of this creditor should be filed.

Additionally, Trustee argues that the plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of $100.57 for 60 months with a 1% dividend to unsecured creditors, which total $290.75.

The Debtors' 2012 tax refund totals $2,747.00; however, Debtors do not propose to pay any funds from the tax returns into the Plan, or adjust their withholdings so that they will not receive a tax refund and increase the plan payment.

**RESPONSE TO OBJECTION**

Debtors David Henry Smith and Michelle Anne Smith respond to the Trustee's Objection by stating that they have filed a First Amended Schedule D to indicate the date on which the claim was incurred, and the length of the contract with Bank of America. Debtors' First Amended Schedule D, Dckt. No. 43, lists the claim of Bank of America in the amount of $49,468.88 (with an unsecured portion of $24,990.88) for a Motorhome vehicle loan, which originated on April 16, 2004. The term is listed as 240 months.

Debtors state that they have filed a Motion to Value the Secured Claim of Bank of America on this claim, Dckt. No. 36, which reclassifies Bank of America, N.A. as a Class 2 Creditor, from a Class 4 creditor. Debtors state that they have also corrected the errors showing that the general unsecured creditors would only receive a 1% dividend. General unsecured creditors will receive no less than an 8% dividend.

A Motion to Value the Secured Claim of Tri Counties Bank, Dckt .No. 30, has also been filed. The Debtors will reclassify the creditor as a Class 2 Creditor from a Class 4 Creditor with regard to that specific lien.

Additionally, Debtors have indicated in their proposed plan that all future tax refunds received by the Debtors during the 60 month commitment period to be turned over to the Chapter 13 Trustee. Debtors have submitted all amended schedules and related documents affected by the newly proposed First Amended Chapter 13 Plan on April 21, 2014. Debtors have filed a Motion to Confirm the First Amended Chapter 13 Plan to reflect that the changes have been made. The Motion to Confirm that Plan is scheduled to be heard on June 3, 2014. Dckt. No. 28.

**AMENDED PLAN**

Subsequent to the filing of this Motion, the Debtors filed a first amended Plan on April 21, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

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

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

**44. 10-26265-E-13 PABLO/ROBIN PADILLA**
**WSS-3 W. Steven Shumway**

**CONTINUED MOTION TO APPROVE LOAN MODIFICATION**
**3-27-14 [46]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, respondent, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). 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 Motion to Approve the Loan Modification is denied without prejudice.**

The Motion to Approve the Loan Modification was continued to this date to permit Debtors to file and serve, on or before May 12, 2014, a supplemental declaration regarding the service on Deutsche Bank National Trust Company.

Debtors seek an order approving a Loan Modification Agreement with Deutsche Bank National Trust Company as Trustee For Indymac Indx Mortgage Loan Trust 2007-Flx6, Mortgage Pass-Through Certificates Series 2007-Flx6 ("Lender"). On its face the Motion states that the agreement is with

Deutsche Bank National Trust Company, Trustee. The Motion appears to inadvertently (or possibly intentionally) not make reference to any contract being filed as an exhibit to state the terms of a modification between the Debtors and Deutsche Bank National Trust Company.

Robin Padilla, one of the Debtors, testifies under penalty of perjury that "We have negotiated a modification of this loan with our lender..." Dckt. 48. However, while making that statement under penalty of perjury, Ms. Padilla inadvertently (or possibly intentionally) does not disclose the identity of the "lender" with whom she has personally negotiated a loan modification.

Debtors' counsel, Stephen Shumway, has filed his Declaration in support of the present Motion. Dckt. 49. Mr. Shumway states under penalty of perjury that he has received a letter from "the current servicer" of the Debtors' loan, and that a copy of the letter is filed as Exhibit B. While saying he received a letter from an unnamed loan servicer, Mr. Shumway does not provide any testimony under penalty of perjury that he has personal knowledge that Deutsche Bank National Trust Company, Trustee is the creditor.

Mr. Shumway further testifies that he checked the California Secretary of State's website for corporate information, but could not find any information for Deutsche Bank National Trust Company. Having exhausted that one resource, counsel stopped trying to locate the party whom he believes is the creditor.

Exhibit B is a letter on Ocwen Loan Servicing, LLC letterhead. The letter is not written to Mr. Shumway, but to Robin Padilla, one of the Debtors. Presumably Mr. Shumway obtained a copy of the letter from his client, and is seeking to testify that his client told him that Ocwen Loan Servicing, LLC told her that Deutsche Bank National Trust Company, Trustee is the creditor.

Counsel for the Debtors is correct, he will not find an address for Deutsche Bank National Trust Company with the California Secretary of State. As has been disclosed to this court in other hearings, this entity is a federally chartered bank with the United States Comptroller of the Currency. It appears that no attempt was made to learn that information from any other sources, such as an internet search or to contact Ocwen Loan Servicing, LLC to obtain confirmation and a service address. If Ocwen Loan Servicing, LLC would not voluntarily disclose that information (which would raise serious good faith issues for both the servicing company and its clients), Federal Rule of Bankruptcy Procedure 2004 gives Debtors' counsel broad, easy to use discovery to force the disclosure of this information.

In the court's ruling on the prior Motion to approve a loan modification, the court expressly addressed the defects in the pleadings in not providing the court with a legally recognizable entity with whom the Debtors are to contract. Civil Minutes, Dckt. 42. In that ruling, the court address how the purported contract was between the Debtors and some entity identified as IndyMac Mortgage Services. There is no such entity which the court could identify as legally existing anywhere. In the context of other proceedings and basic internet searches information indicates that it is merely a department of OneWest Bank, FSB, not a separate legal entity

which could be a creditor to contract with the Debtors.

The contract which the Debtors request for authorization to enter into has been filed as Exhibit A in support of the Motion. Dckt. 50. The Debtors seek to enter into a loan modification with "IndyMac Mortgage Services." In addition to this not being an entity which the court can identity as legally existing, the Motion states that the creditor is Deutsche Bank National Trust Company, Trustee. For the court to approve this contract would be to authorize the Debtors to contract with a non-creditor, potentially dooming them (and their counsel) to a terrible surprise in several years when whomever the loan is transferred to asserts that no owner of the note ever entered into an agreement to modify it. The Debtors (and counsel) could well be left to trying to figure out who is IndyMac Mortgage Services and whether it is someone who can be sued for the damages caused to the Debtors.

**OPPOSITION BY TRUSTEE**

Trustee states that Debtors incorrectly state that the monthly principal, interest, taxes and insurance payment is $2,041.13. Dckt. No. 46. Per the Home Affordable Modification Agreement, Dckt. No. 50, page 9, the correct amount of $2,467.55 which includes an estimated escrow payment amount.

While the Trustee has an issue with the technical computation of the amount of the modification, he has not raised an issue as to why the Debtors are entering into a modification with someone other than the creditor.

**REPLY BY DEBTORS**

Debtors state that they stipulate that under the loan modification, their principal, interest, taxes and insurance payment will be reduced from $2,471.82 to $2,467.55 per month. However, this does not address the substantive defect that they want to enter into a loan modification with an unidentifiable entity which is not a creditor in the case.

The court is gravely concerned that counsel, after having checked one website, merely threw in the towel and requested the court issue an order for his client to contract with a non-entity which clearly is not the creditor. If Ocwen Loan Servicing, LLC is the loan servicer, then counsel has a ready source for information and correct loan modification documentation. Instead, it appears that expediency in just getting anything authorized by the court has trumped presenting the court with an agreement between the Debtors and a creditor.

The court continued the Motion to this hearing date, so that Debtors could show that service was effected on Deutsche Bank National Trust Company, the supposed creditor in this matter. The docket reflects that Debtors have not filed a supplemental declaration attesting to service made on the Deutsche Bank National Trust Company. The court cannot issue an order authorizing a loan modification agreement that Debtors have entered with an alleged entity that has not been properly served. Thus, the Motion is denied without prejudice. FN.1.

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FN.1. The federal judicial process is not one in which a party repeatedly

files defective motions improperly requesting relief in an effort to wear down the court. If such a patently defective motion is filed a third time, it may well be denied with prejudice and counsel can address for his client why they will be unable to modify their loan during the period of this bankruptcy case.

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**SUPPLEMENTAL PLEADINGS BY DEBTORS**

On May 15, 2014, the Debtors filed a Supplement to Motion. Dckt. 59. In this Supplement Debtors' counsel argues that he has been in contact with counsel for the current loan servicer and the creditor. (From the structure of the sentence the court cannot tell if the attorney represents both the service and the creditor, being two different entities, or if the servicer and creditor are the same entity.) Counsel for Debtors states that now that he has spoken with the servicer's attorney who has provided him with a loan modification "[c]ontaining different terms from what had been offered by the prior servicer of the Debtor's mortgage."

Now being presented with different loan modification terms, the Debtors request that the court approve them or continue the hearing so that the loan modification agreement may be "properly" (in the court's words) presented to the court.

Debtors' attorney provides his declaration of a conversation he had with the attorney for Ocwen Loan Servicing and Deutsche Bank National Trust Company, as Trustee. Dckt. 60. A print out of an email that counsel received from the attorney for Ocwen Loan Servicing is provided as an exhibit. No loan modification agreement document is referenced in the declaration or provided as an exhibit.

Provided as an unnumbered or letter Exhibit is a copy of an email thread between Debtors' counsel and the attorney for Owen Loan Servicing. Dckt. 61. No loan modification agreement stating all of the terms for the modification is provided. The email thread does not purport to set forth all of the terms of the modification, stating,

> "My clients are willing to consider a loan modification with the terms described below. Please be advised that this email is merely a courtesy and is **not** in any way intended to encompass all potential terms of the proposed loan modification. Also, please be advised that the non-HAMP loan modification described below is conditioned upon your client's dismissal of this action with prejudice and a signed waiver and release of all claims."

*Id.* (Emphasis in original.)

This email thread and efforts by counsel to buffalo the court into signing a "blank check" authorization to enter into whatever post-petition credit they want and give the creditor the "go-ahead to impose all the onerous, unreasonable terms you want" as part of the court approved modification.

Additionally, the email i s expressly contingent on dismissal of some

unidentified litigation with prejudice and the granting of a release. The court cannot identify any such litigation or what rights the estate is giving up. If such litigation exists and has been undisclosed, stating that the present attempts to obtain this order is a "fraud upon the court" would not be too strong.

The Loan Modification Agreement has not been presented to the court as is required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Before coming to this court for an order requesting approval of post-petition financing, counsel for Debtors can obtain a copy of the actual loan modification agreement, satisfy himself that the terms are fair and proper, and then file a motion to have that loan modification authorized (with a copy of the loan modification provided to the court). This court is not going to bind the Debtors to a sight unseen loan modification on whatever terms are dictated by the creditor. (The court recognizes that Owen Loan Servicing has not come to the court making such a request, but that it is Debtors' counsel who appears to be seeking to so bind the Debtors.)

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

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

**45. 14-21066-E-13 WALTER/PATTY KNOWLES** **CONTINUED MOTION TO VALUE**
**DCR-1 Darrel C. Rumley** **COLLATERAL OF LITTON LOAN SERVICING**
**2-25-14 [15]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 25, 2014. By the court's calculation, 59 days' notice was provided. 28 days' notice is required. That requirement was met.

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 decision is to deny the Motion to Value the Secured Claim of Litton Loan Servicing without prejudice**.

The court continued the hearing on this matter from April 22, 2014. Civil Minutes, Dckt. No. 33.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6461 Tupelo Dr., Citrus Heights, California. The Debtor seeks to value the property at a fair market value of $130,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $162,963.00. "Creditor" Litton Loan Servicing's second deed of

trust secures a loan with a balance of approximately $60,234.00.

Debtors seeks to value the collateral of "Litton Loan Servicing." However, it has been repeatedly represented in this court that loan servicing companies including Litton Loan Servicing are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is "held by Litton Loan Servicing," and that the first deed of trust in the subject property is held by "Ocwen Loan Servicing" indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claims secured by the first and second deeds of trust.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Litton Loan Servicing. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

Debtors' exhibits only consist of their filed Schedule A, which doesn't list the name of the creditor holding a secured claim in Debtors' residence, and an email from a realtor pricing the subject property at $130,000, based on a sales comparison analysis conducted to draw up an estimation of value for Debtors' home. Dckt. No. 18.

No assignment or transfer of claim appears on the docket transferring any interest to Litton Loan Servicing. The court is not certain how Debtors can name Litton Loan Servicing as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation.

The court continued the hearing on this Motion from April 22, 2014 to this hearing date. Dckt. No. 33. A review of the docket shows that nothing further has been filed in this matter. Debtors have not produced additional evidence identifying and showing the true creditor who holds the second deed of Debtors' real property.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. Thus, 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 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 is denied without prejudice.

**46. 14-21066-E-13 TSB-1 WALTER/PATTY KNOWLES Darrel C. Rumley**

**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**3-13-14 [28]**

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

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**
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Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors 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.

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

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

The court decided to continue the hearing on this matter from April 8, 2014, so that the matter could be conjunction with the hearing on the motions to value secured claims. Civil Minutes, Dckt. No. 32. The hearing was again continued from April 22, 2014, because the Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, was continued to his hearing date. Civil Minutes, Dckt. No. 36.

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that the Plan relies on the pending Motions to Value the Secured Claim of Golden One Credit Union and Litton Loan Servicing, which are set for hearing on April 22, 2014.

On April 22, the court granted the Motion to Value the Secured Claim of Golden One Credit Union, on a second deed of trust recorded against Debtors' 2009 Chevrolet Malibu Hybrid. On this hearing date, however, the court denies Debtors' Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1. Because the Motions to Value the Secured Claim of Litton Loan Servicing is not granted, Debtors' plan will not have sufficient monies to pay the claims in full. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

**47. 14-21567-E-13 DEAN DOMACH** — **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**TSB-1 C. Anthony Hughes** — **4-10-14 [22]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 10, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court set the Objection for final hearing on May 20, 2014 to consider the opposition filed by Debtor.

The Chapter 13 Trustee having filed a Notice of Withdrawal on May 14, 2014, Dckt. 41, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's Objection to Confirmation is dismissed without prejudice, and the court removes this Matter from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 41, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Objection to Confirmation is dismissed and the Chapter 13 Plan is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

**48. 10-49971-E-13 RAMON/KELLY YEE — MOTION TO MODIFY PLAN**
**CYB-4 Candace Y. Brooks — 4-10-14 [70]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee has filed limited opposition to the Motion to Confirm the proposed plan. The Trustee states that the Debtors' proposed plan and motion differ on the percent to be paid to holders of unsecured claims. The Motion, Dckt. No. 70, Item 7 states "no less than 28%." The plan proposes in section 2.15 "no less than .28%." According to the Trustee's calculations, the proposed plan will pay no less than a 28% dividend.

The Trustee would have no objection to including in the order confirming the plan, the statement that "unsecured creditors shall be paid no less than 28%."

The proposed Chapter 13 Plan complies with 11 U.S.C. §§ 1322, 1325, and 1329, the Motion is granted, and the Plan, as amended, 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, and the Debtor's First Modified Plan filed on April 10, 2014, as amended to state in Section 2.15 of the Plan is that Class 7 claims will receive "no less than a 28% dividend." Counsel for the Debtors shall prepare an appropriate order confirming the First Modified Chapter 13 Plan, stating the above amendment, 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.

**49. 13-25371-E-13 ROY/MICHELLE MARIANO — MOTION TO MODIFY PLAN**
**WW-1 Mark A. Wolff — 4-7-14 [30]**

Final Ruling: No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. By the court's calculation,43x days' notice was provided. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court issues 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 April 7, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**50. 14-22571-E-13 GG-1 IGNACIO/YOLANDA OROZCO Gerald B. Glazer MOTION TO VALUE COLLATERAL OF CITIFINANCIAL SERVICES, INC. 4-21-14 [16]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 21, 2014. By the court's calculation, 29 notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of CitiFinancial Services, Inc., "Creditor," is granted and creditor's secured claim is determined to be $0.00.**

The Motion to Value filed by Ignacio Orozco and Yolanda Orozco, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 7637 Orpheum Way, Antelope, California, "Property." Debtors seek to value the Property at a fair market value of $207,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $210,689.03. Creditor's second deed of trust secures a claim with a balance of approximately $65,549.47. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ignacio Orozco and Yolanda Orozco, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiFinancial Services, Inc., secured by a second in priority deed of trust recorded against the real property commonly known as 7637 Orpheum Way, Antelope, 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 $207,000.00 and is encumbered by senior liens securing claims in the amount of $210,689.03, which exceed the value of the Property which is subject to Creditor's lien.

**51. 10-20081-E-13 CRYSTAL DIBENEDETTO — MOTION TO MODIFY PLAN**
**PGM-1 Peter G. Macaluso — 4-4-14 [34]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the basis that there is no current statement of income on file. According to the Trustee's records, the last statement of income was filed on January 4, 2010. Dckt. No. 1.

The Debtor's declaration filed with this Motion, Dckt. No. 36 at 1, states "I have been on FMLA for year for myself. I just had surgery and am getting back on my feet." ¶ 2, Dckt. No. 36. The Trustee is unclear if the Debtor's income has changed since the filing of the case.

On May 13, 2014, Debtor's counsel filed a "Reply," arguing that Debtor states that she is a long-term employee of Costco, as stated on Schedule I when this case was filed in 2010, and that she had surgery (at some point in time), "was" on Family leave, but has not returned to work. This "Reply" causes the court to have several concerns. First, no evidence has been presented by the Debtor to support these arguments of counsel. No declaration has been provided, and it appears that the Debtor is carefully attempting to avoid having to make any such statements under penalty of perjury. Second, the "Reply" argues that the Debtor did Family Leave benefits, but does not state what the Debtor's income is now. It merely argues that there were benefits and that the Debtor has since returned to work.

It appears that the Debtor and her counsel have worked hard to keep from clearly stating under penalty of perjury the Debtor's current income. Possibly the Debtor does not have sufficient income to fund a plan. Possibly the Debtor's income is higher and the plan payments should be higher. The court will not just "guess what is right" and just assume what the Debtor's truthful and accurate income is in 2014.

Based on the lack of information on Debtor's current income, the modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed. The court denies the Motion without prejudice,

so that if the Debtor decides that she wants to testify as to her current income, she can attempt to confirm the current proposed plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

**52. 13-22083-E-13 CYNTHIA BAKER — MOTION TO MODIFY PLAN**
**PGM-2 Peter G. Macaluso — 4-10-14 [41]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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 issues 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 Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 10, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**53. 14-23087-E-13 DJC-1 — MOLLY MILLIKIN, Diana J. Cavanaugh — MOTION TO VALUE COLLATERAL OF AIR FORCE FEDERAL CREDIT UNION 4-22-14 [14]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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

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

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

from the parties' pleadings.

**The Motion to Value secured claim of the Air Force Federal Credit Union, "Creditor," is granted and creditor's secured claim is determined to be $0.00.** No appearance required.

The Motion filed by Molly Edith Millikin, "Debtor","to value the secured claim of Air Force Federal Credit Union, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Toyota Camry Solara SLE convertible 2DR, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $8,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in December 11, 2008, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,533.37. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $8,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Molly Edith Millikin, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Air Force Federal Credit Union, "Creditor," secured by an asset described as 2007 Toyota Camry Solara SLE convertible 2DR, "Vehicle," is determined to be a secured claim in the amount of $8,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

**54. 13-30488-E-13 KIM BUONOCORE**
**ASW-1 Ashley R. Amerio**

**CONTINUED MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT**
**3-28-14 [32]**

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

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

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

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Local Rule 9014-1(f)(1) Motion - 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 28, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required. That requirement was met.

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

**The Motion to Approve the Loan Modification is denied 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:

EverBank ("Movant"), seeks an order authorizing Debtor and Movant to enter into and finalize a loan modification with respect to the first deed of trust on the real property located at 5855 Annrud Way, Sacramento, California. The Loan Modification Agreement provides for recapitalization of past due arrears, a lower interest rate and monthly payment amount, and

an extension of the loan's "Maturity Date." A copy of the Loan Modification Agreement is attached as Exhibit "1" to the list of Exhibits in Support of the Motion, Dckt. No. 34.

Everbank has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $1,648.76 to $1,327.31. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 6.000% to 4.625%. The maturity date of the note will be March 1, 2054, with a term of note of 480 months.

In this instance, however, the attorney for Debtor has not signed off on the motion or filed a separate concurrence. It is unclear whether Creditor has, for example, entered into prohibited communications with the represented Debtor in violation of the Rules of Professional Conduct in filing this Motion, which seeks court approval of the purported loan modification agreement on behalf of the Debtor. Debtor's counsel has been excluded from this Motion. It appears that Everbank and its counsel have taken on the legal and fiduciary role of filing motions for the Debtor.

While some courts have taken the position that creditors do not have standing to bring a motion for a debtor to obtain approval of a loan modification, this court's view has not been so narrow. Just as in approving a compromise with a trustee or debtor in possession where a creditor prepares the motion to approve the stipulation, the creditor may take the laboring oar in a motion to approve a loan modification.

However, in neither case may the attorney for the other party be non-existent in the motion. Counsel must either bring the motion jointly with the creditor, countersign the motion evidencing these Debtors, attorneys' concurrence and Debtor's support, a declaration for the Debtor prepared by Debtor's counsel, or file a separate statement of support for the motion. Only then does the court know that the Debtor, who is represented by counsel, have with the knowledge and support of such fiduciary, entered into this agreement. Otherwise it appears that counsel representation has been circumvented or that counsel has failed to fulfill his or her duties to the Debtor.

The court's decision is to deny the Motion without prejudice. The absence of Debtors' counsel leave the court in the quandary as to whether the Debtors have been properly represented. The court will not blindly sign orders when the attorney for one of the parties has not appeared for their clients on the matter.
The court shall issue a minute order substantially in the following form holding that:

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

**55. 10-31191-E-13 WILLIAM/KELLY WILSON**
**CAH-1 Aaron C. Koenig**

**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.**
**4-14-14 [69]**

**Final Ruling:** No appearance at the May 20, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Respondent Creditor, parties requesting special notice, and Office of the United States Trustee on April 14, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted and the secured claim is determined to be in the amount of $0.00.**

The Motion to Value filed by William John Wilson and Kelly Wilson, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 3696 Fairway Dr. Cameron Park, California, "Property." Debtors seek to value the Property at a fair market value of $377,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $418,929.00. Creditor's second deed of trust secures a claim with a balance of approximately $280,225.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB*

*Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by William John Wilson and Kelly Wilson, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 3696 Fairway Dr. Cameron Park, 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 $377,000 and is encumbered by a senior liens securing a claim in the amount of $418,929.00, which exceeds the value of the Property which is subject to Creditor's lien.

| | | | |
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| **56.** | **11-48695-E-13 JT-2** | **DALE GAGEL AND SUZANNE MAY<br>Aaron C. Koenig** | **CONTINUED OBJECTION TO CLAIM OF MARY BRYAN, CLAIM NUMBER 8<br>8-29-13 [37]** |

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 61 days' notice was provided. 44 days' notice is required.

This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to overrule the Objection to Proof of Claim Number 8 of Mary Bryan with prejudice.**

The Proof of Claim at issue, listed as claim number 8 on the Court's Official Registry of Claims, was filed by Mary Bryan and asserts a $48,717.01 priority claim (11 U.S.C. § 507(a)(1)(A) or (B) Domestic Support Claim). Dale Gagel and Suzanne May ("Debtor") filed an objection to the claim which states with particularity the following grounds,

A. Though filed as a secured claim and a priority claim, there is evidence of neither.

B. The $48,718.01 claim is based on money owed for a credit card obligation. The Debtor was to make the credit card payments.

C. The Debtor's obligation to make the credit card payment is not a "support" obligation.

Objection to Claim, Dckt. 37.

Both Debtors filed a declaration testifying under penalty of perjury, based on their personal knowledge, to the following.

A. The obligation owed to Creditor is from the dissolution of the marriage between Dale Gagel and the Creditor. (Though both Debtors are testifying, the court is presuming that when the reference is made to "ex wife" and "our marriage," it is Dale Gagel speaking and not Suzanne May. The parties can correct the court as to any mischaracterization of the testimony.)

B. The claim is not secured.

Declaration, Dckt. 39. No copies of any of the marital dissolution proceeding documents are provided by Debtor.

**CREDITOR'S OPPOSITION**

Creditor Mary Bryan opposes the Objection and argues that Debtor needs to fulfill his agreement that was determined in the Family Court in their divorce from 2007. Creditor states that Debtor Dale Gagel was to pay her $825.00 a month to pay his portion of medical insurance, student loan, car loan, credit card and other charges generated during the marriage that she was obligated to pay pursuant to a divorce agreement. Creditor states Debtor Gagel defaulted on his payments to her in October of 2008.

Creditor explained she had some difficulty in filing a claim and accidentally filed both 7-1 and 8-1, 8-1 being the one with the supporting documents and 7-1 being solely the cover page. Creditor believes the debt should be secured and cannot be dismissed in a bankruptcy.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, the Proof of Claim filed by Creditor indicates both a secured and a priority debt. Such could be possible, and is commonly seen with the Internal Revenue Service and the California Franchise Tax Board. Proof of Claim Number 8 filed by Creditor does not have any documents evidencing either a judicial or consensual lien having been granted.

With respect to the contention that the claim is entitled to priority status, the situation has been made murky by the parties. 11 U.S.C. § 507(a)(1) allows first priority for allowed unsecured claims for domestic support obligations that as of the date of the filing of the petition are owed to or recoverable by a spouse, former spouse or child of

the debtor. 11 U.S.C. § 101(14A) provides that a "domestic support obligation" means a debt that accrues before, on or after the date of the order for relief, that is owed to a former spouse in the "nature of alimony, maintenance, or support...without regard to whether such debt is expressly so designated" of such former spouse.

Whether an obligation is in the nature of support and thus qualifies as a support under bankruptcy law is a question of federal law. *In re Sternberg*, 85 F.3d 1400, 1405 (9th Cir. 1996), *rev'd on other grounds, In re Bammer*, 131 F.3d 788 (9th Cir. 1997). In determining whether an obligation is a domestic support obligation entitled to priority under § 507(a), the court looks to the interpretation of domestic support obligation discussed in cases relating to the dischargeability of support under former § 523(a)(5). *In re Chang*, 163 F.3d 1138, 1142 (9th Cir. 1998).

The issue to be determined is whether the obligation is in the nature of support. In making that determination, "the court must look beyond the language of the decree to the intent of the parties and to the substance of the obligation." *Shaver v. Shaver*, 736 F.2d 1314, 1316 (9th Cir. 1984). When the obligation is created by a stipulated dissolution judgment, the intent of the parties at the time the settlement agreement is executed is dispositive. *Sternberg*, 85 F.3d at 1405. Factors to be considered in determining the intent of the parties include whether the recipient spouse actually needed spousal support at the time of the divorce, which requires looking at whether there was an "imbalance in the relative income of the parties" at the time of the divorce. *Id.* Other considerations are whether the obligation terminates on the death or remarriage of the recipient spouse, and whether payments are made directly to the spouse in installments over a substantial period of time. *Id.*; *Shaver*, 736 F.2d at 1316-17. The labels the parties used for the payments may also provide evidence of the parties' intent. *Sternberg*, 85 F.3d at 1405.

Here, the parties have chosen language for the Dissolution Judgment which are cryptic at best. Part 1 of the attached agreement states,

> "1. Spousal Support:
>
> > a. Spousal Support is reserved for purposes of enforcement of the payment of debt only, until debts are paid in full on April 30, 2011 (as set forth in Section 2.h.(i), the date of which is contingent on no missed payments."
> >
> > b. If necessary for payment of debts, any spousal support ordered shall be without tax consequences to either party.
>
> 2. Division of Property
>
> > h. Equalization Payment:
> >
> > > i. To equalize the payment of the community debts, beginning May 1, 2007, Husband shall pay to wife $825 per month ($412.50 on the 5th of the month and $412.50 on the 21st of

> the month) for a period of 48 months. This amount includes Husband's share of the community debt, Husband's separate debt and reimbursements owed to Wife. The last payment to Wife shall be made in April 2011, irrespective of the balances on the credit cards awarded to Wife.
>
> ii. Should Wife decide, at any point during the 48 month, to file bankruptcy and the debts are discharged, Husband shall no longer owe the $825 per month and shall only owe a total of $3,261.18 to Wife for the reimbursement portion of the total. If Wife files for Chapter 13 bankruptcy, Husband's share of the debt will need to be recalculated pursuant to what is actually being paid by Wife. If Wife does file bankruptcy, she shall notify Husband, in writing, within 72 hours of filling."

Proof of Claim Number 8, attachment.

This court does not understand what is means to say that "Spousal support is reserved for purposes of the payment of debt only...." Possibly, as the Debtors argue, the debt payments required by the Debtor were only for purposes of equalizing the assets and liabilities, and not support. On the other hand, the State Court judge may have been saying that so long as the debts are being paid by the Debtor, the State Court judge was reserving requiring support payments. For state law purposes, it is not necessary for characterize an obligation as support for the recipient spouse being able to enforce the monetary obligation.

There is little judicial economy or the economy of the parties to try and recreate the specialized State Court dissolution proceedings before this bankruptcy judge. Further, these family law, support matters are ones in which the federal courts give due deference to the state courts, so long as the state court proceedings can be diligently prosecuted in a timely manner.

At the initial hearing of October 29, 2013, the court ordered the parties to proceed in state court to obtain the issuance or determination of the obligations of the parties and any spousal support obligation pursuant to paragraph 1 of the Judgment of Dissolution in California Superior Court, for the County of Sacramento, Case No. 05FL08596.

The court ordered that on or before December 16, 2013, Mary Bryan should file such motions or other proceedings to obtain a determination that the monetary obligations, or whatever portion there is so ordered by the State Court judge, is a Spousal Support obligation, and the necessary findings of fact and conclusions of law for this court to apply that determination to federal law in this bankruptcy case. As the court was unable to interpret the meaning of spousal support as set forth in the state court judgment, the court allowed a continuance of 60-90 days for the parties to return to family court and have the judge retaining jurisdiction

clarify the judgment.

**Clarification of Judgment Hearing Date Set**

On December 13, 2013, Mary Bryan filed a document from the Family Law Court of the Sacramento County Superior Court, showing that a hearing date on Creditor Bryan's request for a clarification of judgment from the family law court has been set for January 22, 2014. The document shows that Bryan has requested a clarification of the Judgment of Dissolution dated October, 2007. The family court is being asked to determine whether or not the obligation arising out of Joint Debtor Dale Gagel and Bryan's settlement agreement, where Debtor agreed to pay half of the outstanding credit card and other obligations, constitutes spousal support.

The court previously continued this Objection to March 4, 2014, to allow Creditor and Debtor to obtain a clarification of the judgment of dissolution from the originating family court. The court continued the hearing to afford the state court and parties the ability to address any supplemental pleading and evidentiary issues, and for the state court to issue its ruling prior to another hearing.

**Reported Failure of Debtor to Participate in State Family Court Action**

On March 20, 2014, Creditor Mary Bryan informed the court that a hearing had been held by the family law court, in which Joint Debtor Dale Gagel did not appear. Because Dale Gagel did not attend the hearing, Mary Bryan stated that she had not been able to obtain the documents requested by the court. Mary Bryan also stated her intent to attend the hearing on this matter, and to provide the court with a status update on what has transpired since the last hearing on Debtors' Objection.

In light of the concerns raised by Creditor Mary Bryan regarding Debtor's failure to attend the state court clarification proceeding, the court issued an Order to Set a Status Conference on March 25, 2014, with counsel for the Debtors and Mary Bryant to address any problems with the parties prosecuting the necessary state court family law proceedings and whether the address which the Debtor has provided this court, in Roseville, California, is correct. Dckt. No. 62.

**March 25, 2014 Hearing**

At the hearing Debtor Dale Gagel's counsel advised the court that Mr. Gagel was in Branson, Missouri but still used the address which is listed with this court, 1303 Len Way, Roseville CA 95678, for the service of process and pleadings in this bankruptcy case. He professed that the Debtor Dale Gagel desired to have the family law judge make the determinations on the orders as required for the prosecution by the bankruptcy court. However, it would be difficult for him to attend the hearing.

The court finds that Dale Gagel's unavailability and apparent unwillingness to participate in the state court family law proceedings which are necessary for this court to adjudicate matters in this bankruptcy case, and thereby unwillingness to appear in person in these bankruptcy proceedings he voluntarily commenced, inconsistent with Dale Gagel's

obligation to prosecute this bankruptcy case in good faith.

The court has instructed counsel for Debtor Dale Gagel, and orders, that Mr. Gagel must sufficiently participate in the Family Law Case that the judge therein can enter final order determining the nature and basis of Creditors claim. Failure to do so will result in the denial of this objection to claim with prejudice.

The continued state court proceeding is set for April 22, 2014. At the March 25, 2014 on the instant Objection to Claim, the court stated that if the state court is unable to issue an order in that proceeding because of Debtor Dale Gagel's failure to appear or participate in that action at the April hearing, this bankruptcy court shall overrule the objection to claim with prejudice. Dckt. No. 68.

**CHANGE OF ADDRESS**

A Change of Address for Debtor Dale Duane Gagel was filed on March 31, 2014, Dckt. No. 70, listing the change of Debtor's address from an address located in Roseville, California, to Branson, Missouri.

**STATEMENT OF MARY BRYAN**

On April 30, 2014, Claimant Mary Bryan filed a letter to the court, stating that she went to family court on Monday, April 21, 2014. She states that Debtor Dale Gagel again did not appear, and that her "attorney confirmed by certified mail that the Branson Missouri address is a valid address for him." Ms. Bryan attaches the paperwork that she purportedly received from the family court judge. Dckt. No. 71.

The attached Law and Motion Proceedings document issued by Judge Bunmi O. Awoniyi in the Sacramento County family court contains handwritten notes, presumably from the court, stating that no appearances were made by the respondent, and that no "responses" were filed by the respondent for the matter.

The notes further (transcribed to the best of the court's ability) state:

> Petitioner represents under oath that she discharged debt confirmed to Respondent to preserve her credit.
>
> The Judgment file endorsed 9/28/2007 page 1 para 1(a) and (b) specifically reserved the court's jurisdiction to award Petitioner spousal support under these circumstances as a non [illegible] event.
>
> Petitioner needs to file her RFO for post judgment SS to address the default on the payment of com bills and state the amount she is [servicing] to be paid as spousal support.

Attached Exhibits to Dckt. No. 71. The state court judge has not entered a final judgment determining the nature and basis of Mary Bryan's claim because of Debtor Dale Gagel's failure to appear to the clarification proceedings. However, the state court appears to be prepared to issue a default judgment on the basis of Mary Bryan's community debts, and will

render a determination of whether the credit card bill and other obligations constitute spousal support. The Creditor Mary Bryan must make a "request for order" and take other preliminary steps before the judge is able to issue a default judgment in favor of Mary Bryan.

It appears that the state court is poised to issue a default judgment declaring that the subject obligation, outstanding credit card debt for which Mary Bryan has filed a Proof of Claim, is in the nature as spousal support and must be paid by the Debtor Dale Gagel as part of the Debtor and Bryant's joint settlement agreement. This determination would cause the claim to be a domestic support obligation entitled to priority status under 11 U.S.C. § 507(a).

Even if the state court were not persuaded to make this determination, however, Debtor Dale Gagel's habitual absences in the state court proceedings qualifies as lack of prosecution of his Objection to Mary Brian's Claim.

Having put forth the argument that Mary Bryan's claim should not be accorded priority status under U.S.C. § 507(a)(1), and then failing to attend, and possibly evading his duty to attend, the state court proceedings (which were held with the express objective of clarifying the Judgment of Marital Dissolution), the Debtor appears to have given up his pursuit of the instant Objection. Even after this court expressed its deference to the state court in resolving whether the credit card obligation is in the nature of spousal support, the Debtor has failed or refused continued proceedings to clarify the dissolution judgment.

The Debtor appears to be seeking the extraordinary relief of this court and ignoring his obligations to diligently and properly prosecute it. Having been afforded the opportunity to address these issues in State Court, the Debtor has shunned prosecuting his asserted rights.

The court therefore overrules the Objection to Claim with prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim 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 Objection to Proof of Claim Number 8 of Mary Bryan is overruled with prejudice.
>
> **IT IS FURTHER ORDERED** that this court retains jurisdiction to resolve all issues relating to the claim asserted by Mary Bryan in Proof of Claim No. 8, including, without limitation, determination of the amount, nature, and character of all amounts asserted thereunder. The determination of this claim is necessary to the prosecution

of this bankruptcy case and must be determined by this court under the Bankruptcy Code and 11 U.S.C. § 1334.

**57. 11-24798-E-13 JTN-2** | **KEITH HAYES AND SHARON RANDALL-HAYES** Jasmin T. Nguyen | **MOTION TO MODIFY PLAN** 4-1-14 [47]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of the plan on the basis that it appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent in $934.00 under the terms of the proposed modified plan. $70,514.21 has become due under the proposed plan. Debtors have paid a total of $69,580.21 to the Trustee, with the last payment of $1,000 posted on May 5, 2014.

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

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

holding that:

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

**58. 13-23599-E-13 IVAN MONTELONGO** — **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
**NLE-1 Peter G. Macaluso** — **4-16-14 [88]**

**Tentative Ruling:** The Objection to 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).

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

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

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Local Rule 9014-1(f)(1) Motion - Hearing Required. 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 and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

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).

**The court's decision is to sustain the Objection to Debtor's Claim of Exemptions.**

The Debtor filed an Amended Schedule C on April 10, 2014, and added real property at 4843 Skyway Drive, Sacramento, California. Debtor exempted this property under California Code of Civil Procedure § 703.140(b)(1) in the amount of $24,060.00.

It does not appear that any equity exists in this property, as Amended Schedule C indicates that the value of the property is $170,000.00, with liens against the property of $230,00.00 and $80,000.00. The property commonly known as 4843 Skyway Drive, Sacramento, California is valued at $170,000.00 on Debtor's Schedule A, while the liens encumbering the property total $350,149.36, according to the claims listed on Debtor's Schedule D (which do not identify the specific property subject to the liens, but presumably the debt is secured by the only property listed on Debtor's Schedule A. Dckt. No. 1.

The exemption limits California Code of Civil Procedure § 703.140 applies to any equity the Debtor still has in the property, and protects only the aggregate interest Debtor still retains in the property from creditors in the bankruptcy case. Here, it appears that the equity in Debtor's real property has been exhausted, and that the Debtor cannot claim an exemption in this asset.

Trustee also asserts that the Debtor has over exempted using California Code of Civil Procedure § 703.140(b)(1),(5) in the amount of $14,155.00, as the total amount exempted is $41,080.00, and only $26,925.00 is allowed. In reviewing Debtor's Amended Schedule C, Dckt. No. 87, it appears that Debtor has claimed $41,080.00 in exemptions in real property, cash, appliances, furniture, kitchen items, outdoor items, knick-knacks, personal effects, clothing, costume, a 401K retirement account, and a 1972 Cessna vehicle.

California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of $26,925. Debtor has claimed exemptions under this section in the total amount of $41,080.00. The Court should disallow all of the claimed exemptions and require Debtor to amend her Schedule C for a reduced aggregate amount that is permitted to be exempted under the wildcard exemption.

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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and Debtor is denied the following:
>
> 1. The $14,155.00 of the exemption claimed in the real property known as 4843 Skyway Drive, Sacramento, California, pursuant to California Code of Civil Procedure § 703.140(b)(1).