

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 10, 2014 at 2:00 p.m.

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1. [14-23402](#)-C-13 ISIDRO JIMENEZ MOTION TO VALUE COLLATERAL OF
TOG-1 Thomas O. Gillis ONE WEST BANK, FSB
5-13-14 [[17](#)]

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1880 Meadow Court, Olivehurst, California. The Debtor seeks to value the property at a fair market value of \$89,355 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 \$171,650. Onewest Bank, FSB's second deed of trust secures a loan with a balance of approximately \$82,295. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Onewest Bank, F.S.B. secured by a second deed of trust recorded against the real property commonly known as 1880 Meadow Court, Olivehurst, 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 \$89,355 and is encumbered by senior liens securing claims which exceed the value of the Property.

2. [14-24105](#)-C-13 JUAN AGUILAR AND AIMEE MOTION TO VALUE COLLATERAL OF
ADR-1 LASSERRE DEUTSCHE BANK NATIONAL TRUST
Justin K. Kuney COMPANY
5-8-14 [[15](#)]

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 May 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 303 Moraga Place, Lincoln, California. The Debtor seeks to value the property at a fair market value of \$391,435 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 \$418,967. Deutsche Bank National Trust Company's second deed of trust secures a loan with a balance of approximately \$109,738. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Deutsche Bank National Trust Company secured by a second deed of trust recorded against the real property commonly known as 303 Moraga Place, Lincoln, 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 \$391,435 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

(1.) Under 11 U.S.C. § 1325(a)(6), Debtors cannot make required payments because they are delinquent \$680.00 under the terms of the proposed modified plan. Debtor has paid a total of \$10,520.00 to the Trustee with the last payment posted on May 2, 2014 in the amount of \$500.00.

(2.) Section 2.15 of Debtor's plan proposes a dividend to unsecured creditors of no less than 0.00%. The Trustee calculates that unsecured creditors will receive up to 73%. Where this case is past the bar date for filing timely claims, the Trustee objects to verify that Debtor intends for distributions to unsecured creditors.

Debtor needs to bring plan payments current and adjust his plan to reflect the appropriate distribution to unsecured creditors. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2014. 35 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtor is delinquent \$3,950 in plan payments to the Trustee to date. According to the proposed modified plan, payments of \$29,960 have become due. Debtor has paid a total of \$26,010 to the Trustee with the last payment posted on May 2, 2014 in the amount of \$2,310.

It appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).

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

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

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

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

5. [14-23407](#)-C-13 CHRISTIAN/AGATHA OKOYE MOTION TO VALUE COLLATERAL OF
EJS-1 Eric John Schwab GOLDEN ONE CREDIT UNION
5-8-14 [[18](#)]

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 May 8, 2014. 28 days' notice is required. That requirement was met.

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

The first deed of trust secures a loan with a balance of approximately \$309,741. Golden One Credit Union's second deed of trust secures a loan with a balance of approximately \$71,821.04. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and

11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden One Credit Union secured by a second deed of trust recorded against the real property commonly known as 3457 Birch Tree 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 \$290,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

6. [11-38510](#)-C-13 CHRISTOPHER ANDERSON AND MOTION FOR COMPENSATION BY THE
BLG-4 AMBER DE FEVERE LAW OFFICE OF BANKRUPTCY LAW
Pauldeep Bains GROUP, PC FOR CHAD M. JOHNSON,
DEBTORS' ATTORNEY(S)
5-13-14 [[68](#)]

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

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

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g)

The court's tentative decision is to deny the motion for compensation. 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:

FEES REQUESTED

Chad M. Johnson, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. Counsel is requesting \$3,975.00 in additional fees and \$92.40 in additional expenses.

In July 2011, counsel's firms received a retainer of \$2,500. Per the "Rights and Responsibilities" and 2016(b) Disclosure, counsel and Debtors agreed that the initial fee for legal services and expenses would be \$3,500. No other fees have been allowed by the court. To date, fees in the amount of \$1,000 have been paid by the Chapter 13 Trustee through Debtors' Chapter 13 plan to Bankruptcy Law Group, P.C.

Counsel argues that the initial agreed-upon fee is not sufficient compensation for the legal services rendered.

Description of Services for Which Fees are Requested

Counsel breaks down the services rendered as follows and describes part of them as "substantial post-confirmation work:"

1. Communication with Clients: multiple calls with clients regarding the case, including responding to emails from client. 4.1 hours.
2. Case Administration: reviewing case due to Debtor possibly purchasing a new vehicle, preparation of authorization to mortgage company, emailing documents to mortgage company, and emails and calls with client. 3.5 hours.

3. Motion to Modify (BLG-2): prepare Motion in order to reflect changes in household expenses, list Bass and Associates as a secured claims, and to surrender a "Bowflex" System. 4.1 hours.
4. Motion to Modify (BLG-3): Debtors fell behind on their mortgage and modified the plan to cure post-petition arrearage and to reflect income and expense changes. 9.7 hours.

Chapter 13 Trustee Response, filed 5/27/14 (Dkt. 73)

In response to Counsel's Motion, the Trustee asks the court to consider the following:

1. Total fees and expenses counsel has requested a total \$4,067.40. According to the terms of the Third Modified Plan, Debtors' plan payments total \$9,239.00. Section 6 of the plan states the payments total \$4,360.00 paid as of January 2, 2014 and seven payments of \$697.00 thereafter. No less than 0% is to be paid to unsecured creditors.
2. To date, Debtors have paid \$7,845.00. The latest plan did not contemplate additional attorneys' fees, and only \$90.00 of the requested fees are from a period prior to the plan.
3. Based on the additional provisions of the plan, the Trustee has disbursed \$1,070.17 of the \$3,756.45 for Bank of America as a Class 1 claim under the plan. The remaining plan payments added to the balance on hand of \$2,428.00, totals \$3,822.00. This leaves only \$3,680.58 based on the 3.7%.

Discussion

Attorneys' fees in Chapter 13 cases are governed by Local Bankr. Rule 2016-1. Specifically, LBR 2016-1(c)(3) provides:

If the fee under this Subpart (\$4,000 maximum for non-business Chapter 13 cases) is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

The Disclosure of Attorney Compensation filed at the time Debtors' petition was filed indicates that counsel agreed to accept \$3,500 for representing Debtor with \$2,500 received prior to the filing, leaving a \$1,000 balance due and owing. See Dkt. 1.

In the Rights and Responsibilities, Counsel for Debtor agreed to perform the following, among other services, for a \$3,500 fee, with \$2,500 being paid by Debtors before the filing of the petition:

The attorney agreed to provide the following legal services:

. . .

5. Prepare, file, and serve necessary modifications to the plan which pay include suspending, lowering, or increasing plan payments.

See Rights and Responsibilities of Chapter 13 Debtors and their Attorneys (Dkt. 7).

Debtors' most recently confirmed Modified Plan (Dkt. 55). Debtors' attorney' fees are reflected as \$2,500 paid prior to the filing with \$1,000 to be paid through the plan. The plan further specifically indicates that Debtors are comply with Local Bankr. Rule 2016-1(c).

The "substantial post-confirmation work" described in Counsel's pleadings focuses on post-confirmation plan modifications. Post-confirmation modification services are contemplated in the original Rights and Responsibilities and in LBR 2016-1. Counsel has set-forth no compelling argument that an increase in the fees initially requested and recently planned for in the Modified Plan (Dkt. 55) is justified. The Order Confirming the Second Amended Plan was entered on April 14, 2014. The plan the court confirmed reflects payment of attorneys' fees at the rate of \$3,500, with \$2,500 paid prior to filing, leaving a balance of \$1,000.

The court is not persuaded that counsel for Debtor has met its burden in demonstrating that substantial and unanticipated post-confirmation work took place and justifies awarding greater compensation than that consistently presented to the court throughout the life of this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Croddy 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 for Compensation is denied without prejudice.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's Motion does not conform with applicable law. The motion does not cite 11 U.S.C. § 1329, which is required under LBR 9014-1(d), and FRBP 9013. Trustee would waive this issue, as counsel for Debtor rarely has this issue, but raises it out of an abundance of caution.

The Motion caption identifies the First Modified Plan as dated October 25, 2012. The first modified plan was filed May 2, 2014, as later identified in the Motion. Further, the Motion states the plan was confirmed on October 25, 2012, which was the date the petition was filed. The Order Confirming was entered January 16, 2014.

2. Debtor's Declaration misidentifies information. It identifies the modified plan in the caption as filed October 25, 2012 and misidentifies the original plan as being confirmed on October 25, 2012.

Trustee is not otherwise opposed to plan confirmation and agrees that the modified plan will resolve the problems with the current plan highlighted in Trustee's recent Motion to Dismiss.

The court requires competent evidence, such as a declaration, to determine whether confirmation of a modified plan is appropriate. While the court recognizes that the errors described by the Trustee appear to be a minor oversight, they must be corrected before the court can act on the motion.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 2, 2014. 28 days' notice is required. That requirement was met.

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

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

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 4621 Windsong Street, Sacramento, California. The Debtors seeks to value the property at a fair market value of \$227,212.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$317,733. Blue Sky, LLC's (successor-in-interest to MAVI GOK, LLC) second deed of trust secures a loan with a balance of approximately \$245,312.06. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Debtor also submitted the Declaration of James Chaussee, an appraiser. The appraiser valued the property at 310,000. However, Debtor asserts that the appraiser did not take into consideration the cost of repairs needed to be done on the interior and exterior of the home. Debtor had an estimate done on the repairs and they were estimated at \$82,788.

Creditor's Objection

The Blue Sky Fund, LLC, Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$405,00.00. Creditor submits the Declaration of "State certified independent real estate appraiser, Wesley P. Green" to provide the "as is" valuation.

The result of Creditor's valuation is available equity for its second deed of trust to remain partially secured.

Discussion

The court is faced with a factual dispute over the value of the subject residence. When faced with such an issue, it is customary for the court to set a date for an evidentiary hearing to take place. An evidentiary hearing permits the court to hear a cohesive presentation of evidence and make a determination on the credibility of witnesses.

The evidentiary hearing is scheduled for **[date]** at **[time]**.

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

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

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

IT IS ORDERED that the Motion to Value the secured claim of The Blue Sky Fund, LLC is set for an evidentiary hearing on **[date]** at **[time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 22, 2104. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is causing unreasonable delay that is prejudicial to creditors. Debtor filed an opposition to the Motion.

On June 3, 2014, the court issued an order converting Debtor's case from Chapter 13 to Chapter 11. The court will deny the Trustee's Motion to dismiss 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 Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is denied as moot.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on April 29, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral 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:

Debtor moves for an order valuing the secured claim of "Ally Financial." This Motion is denied for two reasons. First, "Ally Financial," as identified in Debtor's Motion, is not a creditor recognized by the court. Second, respondent creditor, assuming Debtor means to value the claim of Ally Financial, Inc., was not served at an address for the business, per the California Secretary of State Website Business Search.

Debtor served "Ally Financial" at:

Agent for Service
P.O. Box 380901
Bloomington, MN 55438

A search for "Ally Financial, Inc." on the California Secretary of State Website Business search reveals the following suitable addresses for service of process:

Suite 201, MC: 480-300-226
Southfield, MI 48034

and

CT Corporation System
818 West Seventh Street 2nd FL
Los Angeles, CA 90017

The court is not prepared to alter the legal rights of a party creditor until it is assured the party creditor received adequate notice of the pending Motion. Therefore, the court's decision is to deny the Motion

without prejudice so that Debtor may re-file and serve correctly the Motion to Value.

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

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

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

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

11. [14-24246](#)-C-13 CARL ASMUS AND JODI MOTION TO VALUE COLLATERAL OF
SAC-2 CAMPISI ASMUS JPMORGAN CHASE BANK, N.A.
Scott A. CoBen 5-14-14 [[21](#)]

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 837 Morton Way, Folsom, California. The Debtor seeks to value the property at a fair market value of \$510,000.00 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 \$521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$135,807.00. Debtor requests the court to enter an order valuing the secured claim of J.P. Morgan Chase Bank, N.A. at \$0.00 based on the proposed valuation.

Creditor's Objection, filed 05/27/14 (Dkt. 30)

In response, J.P. Morgan Chase Bank, N.A. argues that its claim cannot be bifurcated under 11 U.S.C. § 506 because it believes the fair market value of the property exceeds that which Debtor reports. Creditor is in the process of retaining a Residential Appraiser to provide a full interior and exterior appraisal of the property.

Discussion

The court is faced with a factual dispute over the value of the subject residence. When faced with such an issue, it is customary for the court to set a date for an evidentiary hearing to take place. An evidentiary hearing permits the court to hear a cohesive presentation of evidence and make a determination on the credibility of witnesses.

The evidentiary hearing is scheduled for **[date]** at **[time]**.

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

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

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

IT IS ORDERED that the Motion to Value the secured claim of The Blue Sky Fund, LLC is set for an evidentiary hearing on **[date]** at **[time]**.

12. [12-30049](#)-C-13 SONIA ZAMORA
PGM-3 Scott A. CoBen
Thru #13

MOTION TO APPROVE LOAN
MODIFICATION
5-7-14 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on May 8, 2014. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 16 White Lily Court, Sacramento, California.

Bank of America, N.A. has offered Debtor a trial loan modification under which Debtor is required to make three payments of \$1,659.16 on May 1, 2014, June 1, 2014, and July 1, 2014. After Debtor completes the trial period, she will execute a permanent loan modification with Bank of America, N.A. on finalized terms.

The court is satisfied with the record concerning the trial loan modification and grants Debtor's Motion to enter into the trial loan modification with Bank of America, N.A. Debtor is required to return to court after completion of the trial period with the terms of the permanent loan modification adequately plead in her Motion, pursuant to FRBP 9013.

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

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

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

IT IS ORDERED that the Motion to Approve Trial Loan Modification is granted.

IT IS FURTHER ORDERED that after successful completion of the Trial Loan Modification, Debtor is to return to court to seek approval of the terms of the permanent loan modification.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 28, 2014. Twenty-eight days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee moves to Dismiss Debtor's case for the following reasons:

1. Debtor is in material default pursuant to § 2.8 of the plan, which provides:

If the holder of a Class 1 claim gives Debtor and Trustee notice of a payment change in accordance with Fed. R. Bankr. P. 3002.1(b), Debtor shall adjust the payment accordingly.

Debtor was provided a Notice of Mortgage Payment Change on December 31, 2013, indicating the new mortgage payment would be \$1,931.51, effective February 1, 2014, by Bank of America, N.A. Debtor has not adjusted the plan payment or objected to the Notice of Mortgage Payment Change. Debtor's monthly plan payment per the plan confirmed September 10, 2012 is \$1,925, which is not sufficient to pay the monthly contract installment included in Class 1 of the plan.

2. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is \$1,625 delinquent in plan payments to the Trustee to date.

Debtors' Opposition

Debtor responds that while she did not increase the ongoing mortgage payment, she received a trial loan modification and filed a Modified Plan, set to be heard June 24, 2014.

The court is prepared to grant Debtor's motion to approve trial loan modification, which makes monthly payments on Bank of America N.A.'s claim

\$1,659.16. The court is mindful that Debtor set for hearing a modified plan and motion to confirm the modified plan and is satisfied that Debtor is adequately prosecuting her Chapter 13 case. Cause does not exist at this time to dismiss the case.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2014. Twenty-eight days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee moves to Dismiss Debtor's case for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on April 10, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The continued meeting was set for June 5, 2014.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

Debtors' Opposition

Debtor asserts that he will be present for the June 5, 2014 meeting of creditors and has provided 2012 tax information to the Trustee.

The court's decision is to deny the motion to dismiss as Debtor will remedy or has remedied the Trustee's concerns regarding delay he is causing to Creditors.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2014. 42 days' notice is required. That requirement was met.

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

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

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

Creditor, Wells Fargo Auto Finance, objects to confirmation of Debtors' plan, based on the following:

First Vehicle

1. On September 26, 2012, Debtors entered into a security agreement with Creditor whereby Debtors' purchased a 2004 Infiniti G35. Debtor became obligated to pay the sum of \$10,811.57, with interest at a rate of 14.24%.
2. Based on the NADA Guide, Creditor believes the vehicle has a replacement value of \$9,950.00.
3. Creditor objects to the \$3,000 valuation allocated to the subject vehicle under Debtors' proposed plan.
4. Creditor further objects to the \$96.80 monthly adequate protection payments offered under the proposed plan.
5. Debtor has an outstanding balance of \$8,494.19, creditor argues it is over secured and entitled to reasonable attorneys' fees and costs.

Second Vehicle

1. On September 26, 2012, Debtors entered into a security agreement with Creditor whereby Debtors' purchased a 2007 Chrysler 300C. Debtor became obligated to pay the sum of \$14,972, with interest at a rate of 13.49%.

2. Based on the NADA Guide, Creditor believes the vehicle has a replacement value of \$13,450.00.
3. Creditor objects to the \$6,000 valuation allocated to the subject vehicle under Debtors' proposed plan.
4. Creditor further objects to the \$193.60 monthly adequate protection payments offered under the proposed plan.
5. Debtor has an outstanding balance of \$12,223.51, creditor argues it is over secured and entitled to reasonable attorneys' fees and costs.

Discussion

The court's decision is to deny the Motion to Confirm as moot. Subsequent to the filing of this Motion, Debtors file a first amended Plan on May 30, 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 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 as moot.

16. [14-24665](#)-C-13 SANTIAGO GONZALEZ VALLE MOTION TO VALUE COLLATERAL OF
SAC-1 Scott A. CoBen WELLS FARGO BANK, N.A.
5-12-14 [[15](#)]

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 May 12, 2014. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 400 Cappella Drive, Diamond Springs, California. The Debtor seeks to value the property at a fair market value of \$205,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$241,000. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$62,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 400 Cappella Drive, Diamond Springs, 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 \$205,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 26, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

April 22, 2014 Hearing

Debtor requested the Objection be continued to June 10, 2014 so to be heard with a pending Motion for Relief from Stay.

Objection

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons.

First, Section 2.06 of the Debtor's Plan indicates that attorney fees of \$6,000 have been charged in this case. The Disclosure of Attorney Compensation Form 2016 (Dckt. No. 12, page 33), indicates that \$5,000 has been charged. The Rights and Responsibilities, Dckt. No. 14, indicates total fees of \$4,000.00. The Trustee objects to the award of attorney fees on confirmation unless the fee amount is consistent.

Second, Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and Debtor appears to be married based on the Statement of Monthly Income, Dckt. No. 12. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(2)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for

the use of claimed exemptions.

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

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

The Trustee has had not found any such waiver failed with the court after reviewing the docket. The Trustee's Objection to Exemption, NLE-2, is set for hearing on April 29, 2014.

Third, whether the Debtor can actually make the lump sum payment called for by the plan is in question. The plan calls for the sale of the business within 90 days. The Debtor's business is located on leased premises where the landlord has filed for relief, Dckt. No. 22, and the Motion for Relief for the property is set for April 8, 2014, Dckt. No. 33.

Discussion

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

First, the court recognizes that Debtor filed the Spousal Waiver on April 3, 2014 and will overrule this portion of the Trustee's Objection.

Second, on May 6, 2014, the court entered an order granting Debtor's Motion to Sell "Happy Laundry," for the sum of \$40,000. According to Debtor, this lump sum amount will permit him to pay all creditors in full. Further, Debtor's plan states that it will remit on-going lease payments (to Sabah Francis) until the sale is funded and the arrears will be paid with the proceeds. The court has not received confirmation that the sale transaction was completed, that Debtor is in receipt of the \$40,000, and what the status of the lease agreement is. Further, based on the Motion for Relief from Stay simultaneously pending, Debtor is not current on lease payments and the court is prepared to grant the Motion for Relief at the hearing on June 10, 2014.

Third, Debtor has not provided clarification on the attorneys' fees inconsistencies pointed out by the Chapter 13 Trustee.

Finally, there is a pending Notice to Intent to Close Chapter 13 Case because Debtor has not filed the financial management course certificate.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtors have paid ahead \$451.00 under the proposed plan.
2. Debtors are proposing to reduce dividend to unsecured creditors to 0% from 1%. The Trustee has disbursed a total of \$484.74. Debtors' proposed modified plan does not authorize these payments.
3. The proposed modified plan does not provide for priority creditor Franchise Tax Board. According to Trustee's records, creditor filed a priority claim on December 4, 2012 (Claim 14) in the amount of \$117.34, for an audit assessment on 2009 taxes.

Debtors have not responded to Trustee's Motion and indicated an intent to remedy the outlined issues in the Order Confirming the Plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

Local Rule 9014-1(f)(1) Motion - 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 25, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 14, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. [14-25376](#)-C-13 KEVIN/BREE SEARS
DBJ-1 Douglas B. Jacobs

MOTION TO EXTEND AUTOMATIC STAY
5-23-14 [[8](#)]

Transferred to Department E.

21. [14-21979](#)-C-13 MICHAEL/TERESA BURK
SJS-1 Scott J. Sagaria

MOTION TO CONFIRM PLAN
4-25-14 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 25, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$128.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$128.00 is due on May 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor filed his original Chapter 13 Plan on March 31, 2014. The Plan was not complete as pages 3 and 4 were missing. The Plan called for payments of \$128.00 for 60 months and Green Tree was listed in Class 1 of the plan, with no on-going mortgage payment or arrears provided.
3. Debtor filed a Plan on April 18, 2014, which was complete and called for payments of \$128.00 for 60 months with a 16% dividend to unsecured creditors. Based on the date of the signatures for both plans, March 26, 2014, the plan filed April 18, 2014 was the complete original plan and Trustee has the following objections:
 - a. Amended plan provides no monthly dividend for attorneys' fees.
 - b. The plan provides for Green Tree in Class 1 of the Plan; however, Debtor lists \$0.00 for the on-going

mortgage payments and \$0.00 for arrears. Schedule J shows a mortgage expense of \$725.00. The Trustee cannot determine if the Debtor is in arrears under the mortgage and if the Trustee is to pay the on-going mortgage payment - which is what the plan currently requires.

- c. The plan does not provide for Capital one/Yamaha, Central State Credit Union, Green Tree, and Wells Fargo Dealer Services, which are listed on Schedule D, or Wyndham Resort Development Corp (Claim 5). The Trustee cannot determine if Debtor can make the payments under the plan as Debtor has not provided the treatment of these secured claims. While treatment of all secured claims may not be requires under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the plan because they have additional debtors, or that the Debtor wants to conceal the proposed treatment of a creditor.
- d. The plan does not pass liquidation analysis. 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$7,034 and Debtor is proposing a 16% dividend, which totals \$5,483.90. The non-exempt asset is the 2005 Ford F250, listed on Schedule B and valued at \$7,575, with a secured debt listed on Schedule D in the amount of \$541.00.
- e. The plan is not Debtors' best effort. 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of \$128.00 for 60 months with a 16% dividend to unsecured creditors. Debtors' Form B22C reflects projected disposable monthly income of \$110.49 for 60 months; however, Trustee's revised the Form B22C and finds available \$376.44 per month.
- f. Debtors' Schedules I and J are not accurate. The gross income listed for Diane Snyder on Schedule I is \$1,099; however, her pay advices reflect \$2,238 per month. Debtor admitted at the First Meeting of Creditors that her income was approximately \$2,000 per month.

Debtors' Schedule J reflects auto payments of \$284 and \$192; however, Debtors have not provided for these vehicles in the plan and it is not clear to the Trustee if the vehicles should be paid outside the plan.

Debtors' rental property located at 1115 Howel Road is not reasonably necessary for the maintenance and support of Debtor or their dependants. Schedule I reflects rental income of \$900 per month; however, the mortgage payment listed on Schedule J reflects an amount of \$1,547. Schedule J also reflects a \$100 expense for property insurance for the rental. Debtor is operating in the red on this rental property.

- g. Attorney of record in this case, Timothy Reed, did not appear at the First Meeting of Creditors and has opted into the Guidelines for payment of attorneys' fees. According to the Disclosure of Compensation, the attorney charged Debtors \$2,500. Debtors paid \$1,000 with \$1,500 remaining to be paid through the plan. At the Meeting of Creditors, a different attorney appeared for Debtors and the Trustee objects to allowance of attorney fees under the "no look" procedure.

The court's decision to deny confirmation. The Trustee explained a myriad of deficiencies with the proposed plan and the court directs Debtor to carefully consider them when crafting an amended plan. Further, based on the Trustee's concerns regarding attorneys' fees, the court is going to order counsel to file a Motion to Allow Attorneys' fees, explaining the services rendered and why counsel of record was not present at the meeting of creditors.

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.

IT IS FURTHER ORDERED that counsel for Debtors is not to be compensated under the "no look" standard set forth in Local Bankruptcy Rule 2016-1. Counsel for Debtor is required to file a Motion for Compensation and the court will hold a hearing on the determination of adequate fees for services rendered.

23. [14-24686](#)-C-13 GAIL MARTIN
ULC-1 Julie B. Gustavson

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
5-7-14 [[10](#)]

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 May 7, 2014. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6805 Madrea Court, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$202,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$228,505. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$90,195. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6805 Madrea Court, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$202,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

SETERUS, INC.

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

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

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

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

PROCEDURAL HISTORY

On March 25, 2014, the court heard and granted this Motion to Relief from the Automatic Stay, filed by Creditor Seterus, Inc. No opposition was presented at the hearing, prompting the court to enter the defaults of the Debtor and the non-responding parties in this matter.

On April 30, 2014, Debtor filed a Motion to stay a foreclosure sale and reinstate the automatic stay. Debtor argued that she was current on her plan and that a motion to confirm was set for June 3, 2014. The court granted the Motion on the grounds represented by Debtor and vacated the Order granting the Motion for Relief from Stay.

The Motion was reset for hearing on June 3, 2014 to be heard in conjunction with Debtor's Motion to Confirm. Both motions were continued to June 10, 2014. Disposition of the Motion for Relief from Stay is contingent on the court's determination on the Motion to Confirm. At the June 3, 2014 hearing, the court permitted a one-week continuance to see if Debtor could cure the delinquency holding her back from plan confirmation. At this time, the court is not aware that the delinquency is cured and the tentative decision to grant the Motion for Relief From Stay remains unchanged.

REVIEW OF THE MOTION

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

- A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust. The court accepts the loan servicing company as being a real party in interest for a motion for relief from the automatic stay.

- B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.
- C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.
- D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total \$2,400.93.
- E. No post-petition payments have been made to Movant.
- F. The principal amount due and owing on the Note is \$129,274.36 and there is also an additional deferred principal of \$56,479.13 owed under the modification Agreement.
- G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of \$141,611.00.
- H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$2,400.93 in post-petition payments past due. From the evidence provided to the court, and only for purposes of

this Motion for Relief, the debt secured by this property is determined to be \$185,753.46, as stated in the Robinson Declaration and drawn from the Loan Modification Agreement (Exh. D, Dckt. 38), while the value of the property is determined to be \$141,611, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee Response, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent \$1,105.00 and the plan is not confirmed. Debtor has paid a total of \$1,105.00 to date. The Trustee will disburse \$807.00 to Seterus on February 28, 2014.

Supplement to Motion for Relief From Automatic Stay, filed 3/6/14 (Dckt. 48)

On March 6, 2014, Movant filed a supplement to its Motion for Relief from Automatic Stay, clarifying that it is seeking relief from the stay under 11 U.S.C. §§ 362(d)(1) & (2).

DISCUSSION

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, Movant provides the court with information concerning the subject property and related debt and, through the supplement, provided the court the grounds upon which it is seeking relief.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court vacated its previous order based on Debtor's representations that she was no longer delinquent and planned on presenting the court a confirmable plan on June 3, 2014. A review of the plan and the Trustee's objection to the plan illustrates that Debtor is not current on plan payments and may not be able to afford the plan payments. The court is prepared to enter an order denying the Motion to Confirm on June 3, 2014.

Although the Motion for Relief proceeding has been reopened, Debtor has not filed any further documents or evidence showing that she is attempting to become current on her plans on the Creditor's note, or have upheld her payment obligations on the loan modification agreement that she entered with Creditor in 2012, or has tried curing the arrearage on the Creditor's claim.

Debtor has not followed through on the "changed circumstances" that she argued existed in the Motion to Stay Foreclosure sale and the court's decision is to grant the Motion for Relief from Stay.

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the

property.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Seterus Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4321 Greenholme Drive, Sacramento, California.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 29, 2014. By the court's calculation, 35 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has not been properly 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's tentative decision is deny the motion to confirm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing

The court first heard this matter on June 3, 2014. At that hearing, Debtor represented she would cure the remaining delinquency by June 10, 2014. The court continued the hearing on the matter to June 10, 2014. The hearing on Confirmation is set simultaneously with a Motion for Relief from Stay filed by Seterus, Inc. (DJD-1).

Debtor has not presented evidence that the delinquency was cured and; therefore, the court's tentative decision to deny the Motion to Confirm remains unchanged.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

(1.) Debtor is \$1,305 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,325.00 is due on May 25, 2014. Debtor has paid \$5,320.00 into the plan to date.

(2.) Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J reflects \$1,150, however, Debtor is proposing a plan payment of \$1,325 per month.

(3.) Debtor proposes paying the Class 1 on-going mortgage payment and arrears. Creditor's Motion for Relief is pending and set to be granted on June 3, 2014.

The court's decision is to deny the Motion to Confirm. Debtor's plan does not comply with the requirements for Chapter 13 plan confirmation, as detailed by the Chapter 13 Trustee.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan denied.