

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 24, 2014 at 2:00 p.m.

1. [13-33301](#)-C-13 GLORIA WELLINGTON MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 5-15-14 [[52](#)]

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 14, 2014. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of the modified plan for two reasons.

First, it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$30.00 under the terms of the proposed plan. Debtor is delinquent \$11,400 under the terms of the plan confirmed on April 8, 2014. Seven monthly payments have become due since filing, but the Debtor has only remitted 3 payments. The Debtor's declaration does not address why the Debtor became delinquent. The Debtor has filed 3 previous cases, which were dismissed by the court.

Second, the Debtor may not be eligible under 11 U.S.C. § 1308(a). The Franchise Tax Board filed an amended Claim on March 28, 2014 (Court Claim No. 9-1) which indicates that the Debtor did not file a tax return for

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the year ending on December 31, 2010, which is within the 4 year period ending on the date of the filing of the petition. The Debtor states in her declaration, Dckt. No. 54, that she has filed all tax returns for the last four years.

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.

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 May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. The Plan relies on the pending Motion to Value the Secured Claim of OneWest Bank, which was set for hearing on June 10, 2014. The Motion was resolved without oral argument and granted by this court at the June 10, 2014 hearing, thus resolving this part of the Chapter 13 Trustee's Objection. Civil Minutes, Dckt. No. 26.
2. The Debtor admitted at the First Meeting of Creditors held on May 15, 2014, that the Honda Civic listed in Class 2A was involved in an automobile accident. He stated that the vehicle was repaired and Golden One Credit Union was paid in full from the insurance proceeds. Thus, it appears that Golden One should no longer be listed in Class A.
3. Trustee argues that the Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor appears to be under the median income and proposes plan payments of \$320.00 per month for 36 months, with a 3.3% dividend to the unsecured claim holders.
 - A. Not All Income Reported: Debtor received a total refund of \$6,147.00 for tax year 2013. No future tax refund income is projected on Schedule I. (While the Trustee has received and reviewed the tax returns, the Trustee has not filed them as Exhibits, and Trustee believes that they may not be

necessary, but will submit the pay advices if requested or required.)

- B. Debtor received \$4,283.00 in a federal tax refund. Debtor also received a state refund from the 2013 Return in the amount of \$1,864.00. Of the \$6,147.00 refund, \$2,000 was from the child tax credit, since Debtor's dependents as reported on Schedule I are ages 12, 12, and 18 and the fact the debtor is retaining the real property, it appears that the tax deductions in the future are likely to remain the same or similar. If the Debtor included this income in the monthly income calculation, dividing the income monthly throughout the year, they would have at least \$512.25 per month in additional income (\$6,146/12). Continued tax refunds appear likely, and Debtor's income should be adjusted to either reflect the tax refund income or a lower tax expense.

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)(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 May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

1. The Plan relies on the pending Motion to Value the Secured Claim of OneWest Bank, which was set for hearing on June 10, 2014. The Motion was resolved without oral argument and granted by this court at the June 10, 2014 hearing, thus resolving this part of the Chapter 13 Trustee's Objection. Civil Minutes, Dckt. No. 25.
2. Debtors have improperly classified Ocwen Loan Servicing in Class 1 of the Plan with no reported mortgage arrearages. Debtors confirmed at their Meeting of Creditors held on May 22, 2014, that their mortgage payments are up to date. It appears that the claim should be provided for in Class 4 of the plan and paid direct by the Debtors.
3. Debtors' Plan does not propose equal distribution payments under 11 U.S.C. § 1325(a)(5)(iii)(I) to Class 2 creditors. Debtors' plan calls for payments to the Class 2 claim of Safe Credit Union of \$100 per month for 23 months, and no less than \$140 per month for months 35-60, which does not propose a monthly dividend for months 24-34.
4. A review of 2013 tax returns filed reveals that both Debtors received tax refunds for 2013 for a combined total of \$9,659

(Debtors filed separate returns). When questioned at the 341 held on May 22, 2014, the Debtors indicated that they were uncertain whether they were to receive tax refunds in the future as they were recently married, and 2014 will be their first year filing a joint return. The Trustee requests that any future tax refunds be contributed to the plan as an additional payment toward general unsecured claim holders.

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.

4. [14-23406](#)-C-13 MARK/ANDREA DRIVER
DPC-1 Susan J. Dodds
Thru #5

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
5-21-14 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for two reasons. First, it appears that the Debtors' Plan proposes unfair discrimination as to general unsecured claim holders under 11 U.S.C. § 1322(b)(1). Debtors' Motion to Value the Secured Claim of Sierra Central Credit Union was granted by the court at the hearing held on May 6, 2014. Dckt. No. 25. Schedule D lists the automobile as a 2013 F250. According to the claim filed by Sierra Central Credit Union on April 21, 2014, the automobile purchased is actually a 2012 Ford F250 and it was purchased on or around January 19, 2013, which was less than 910 days prior to the filing of the petition. Therefore, it appears that the Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

Second, the additional provisions to Section 6.01 call for all attorney fees to be paid in full prior to any distribution to creditors other than Chapter 13 Administration Expenses and ongoing Class 2 payments. Sections 2.06 and 2.07 calls for a total of \$3,201.00 to be paid through the plan at \$53.00 per month. It will take a total of 60 months to pay the attorney fees in full.

REPLY TO TRUSTEE'S OBJECTION

Debtors have filed a Motion to vacate the order they obtained determining the secured claim of Sierra Central Credit Union to be 0.00.

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Debtors will pay the secured claim of Sierra Central Credit Union for their 2012 Ford F250 as a Class 2 claim to be paid in full throughout the remainder of the plan.

Debtors propose the following language to pay the claim of Sierra Central Credit Union:

1. The Debtors' plan payment shall be \$1,387.00 for month. Beginning in month 2 through the remainder of the 60 months of the Debtors' Chapter 13 plan payment shall be \$1,725.00.
2. The secured claim of Sierra Central Credit Union shall be paid at a monthly rate of \$930.00 at 4.75% beginning in month 2 of the plan.

Debtors also propose to strike the additional provisions at issue.

Having submitted proposed language to correct the treatment of the claim of Sierra Central Credit Union to pay its claim in full, and in striking Additional Provision Section 6.01 of the Plan, the Plan is now in compliance 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 overruled, Debtor's Chapter 13 Plan filed on April 2, and amended to provide that the:

1. The Debtors' plan payment shall be \$1,387.00 for month. Beginning in month 2 through the remainder of the 60 months of the Debtors' Chapter 13 plan payment shall be \$1,725.00.
2. The secured claim of Sierra Central Credit Union shall be paid at a monthly rate of \$930.00 at 4.75% beginning in month 2 of the plan.

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)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Vacate Order 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 Vacate Order is granted. No appearance required.

Debtors seek an order vacating the order previously obtained in valuing the secured claim of the Sierra Central Credit Union. On April 3, 2014, Debtors filed a Motion to Value the Claim of Sierra Central Credit Union, Docket Control Number SJD-1. The Motion was served on the United Staets Trustee, the Chapter 13 Trustee, the Debtors, Sierra Central Credit Union, and Safe Credit Union. The Motion was set for hearing on May 6, 2014 at 2:00 pm. On April 21, 2014, the Sierra Central Credit Union filed a secured claim for \$49,622.13.

No objections to the motion to value Sierra Central Credit Union were filed and the motion to value the claim of Sierra Central Credit Union was concluded on May 6, 2014 without a hearing. On May 18, 2014, the court docketed the Civil Minutes granting the motion to value the claim of Sierra Central Credit Union. Dckt. No. 25.

Debtors now seek to correct this error by seeking to have the order on the motion vacated. The Debtors seek this correction on behalf of their interest of pursuing a reorganization within the limits of the law and seeking that their creditors are treated properly within their bankruptcy case.

DISCUSSION

According to the Trustee's Objection to Confirmation and the Proof of Claim No. 4 filed by the Sierra Central Credit Union on April 21, 2014, Proof of Claim No. 4 at Page 10, the auto purchased is actually a 2012 Ford

F250 and was purchased on or around January 19, 2013, less than 910 days prior to the filing of the petition. Because the lien was incurred less than 910 days prior to the filing of the petition, the valuation motion should not have been granted pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will vacate the Civil Minute Order entered on May 18, 2014. Dckt. No. 27.

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

IT IS ORDERED that the Motion to Vacate Order is granted and the Civil Minute Order granting the Motion for Valuation of the Secured Claim of Sierra Central Credit Union filed by Debtors Mark Edward Driver and Andrea Dawn Driver on May 18, 2014, Dckt. No. 27, is vacated in its entirety.

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 May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

First, it appears that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relies on the Motion to Value the Secured Claim of Golden One Credit Union, which is set for hearing on June 10, 2014.

The Motion was resolved without oral argument and granted by this court at the June 10, 2014 hearing, thus resolving this part of the Chapter 13 Trustee's Objection. Civil Minutes, Dckt. No. 34.

Second, it appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of \$250.00 per month for 60 months, with a 9% dividend to unsecured claim holders.

Debtors' Schedule I lists Christian's net income as \$3,526.00. According to his pay advices, he receives a "BENEFITAMT," which appears to be a credit towards his health expenses. Joint Debtor's Christian's actual net income should be listed as \$4,996.55, and not \$3,526.00 per month. The Debtors received a total federal refund of \$4,375.00 for tax year 2013. No future tax refund income is projected on Schedule I. (While the Trustee has received and reviewed the tax returns, the Trustee has not filed them as

Exhibits, and Trustee believes that they may not be necessary, but will submit the pay advices if requested or required.)

Debtors received \$4,375.00 in federal tax refunds based on their total tax payments of \$16,927.00, where only \$12,552.00 taxes were due. Of the \$4,375.00 refund, \$1,499.00 was from the Child Tax Credit, since the Debtors' dependents as reported on Schedule J are ages 8, 10, and 13, and the fact that Debtors are retaining their real property, it appears that their tax deductions in the future are likely to remain the same or similar. If the Debtors included this income in their monthly income calculation, dividing the income monthly, they would have at least \$364.58 per month in additional income. Continued tax refunds appear likely, and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

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 May 12, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to confirmation of the Plan on the basis that the Trustee is uncertain as to whether the Debtor can make payments under the plan or comply with the Plan under 11 U.S.C. § 1325(a)(6), and because Debtor is delinquent in her plan payments.

The Trustee is uncertain whether Debtor can make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor admitted at her 341 Meeting held on January 30, 2014 that she was not working. In her current declaration, Debtor does not supply any information whether she has found work, but indicates that her mother is providing monthly assistance of \$1,400.00 per month. The concern that the Trustee has with the claim that her mother is willing to contribute is that the declaration filed in support, Dckt. No. 37, is signed by the Debtor and not her mother.

Additionally, all sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtor is \$140.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$160.00 is due on June 25, 2014. Debtor has paid \$320.00 into the plan to date.

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.

8. [14-21209](#)-C-13 LAURIE STEFANELLI MOTION TO CONFIRM PLAN
JRM-1 Joseph R. Manning, Jr. 5-8-14 [[38](#)]

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

Correct Notice Not Provided. No Certificate of Service was filed on the docket pursuant to Local Bankruptcy Rule 9014-1(e)(2), which requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. This requirement was not met. The court cannot determine whether the Motion was set on notice under the requirements of Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

Final Ruling: The Motion to Confirm the Plan was not 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 Motion is dismissed as moot and confirmation is denied. No appearance is required.

Subsequent to the filing of this Motion, the Debtor filed a First Amended Plan on June 19, 2014. Dckt. No. 55. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The Motion is dismissed as moot and confirmation is denied.

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

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

The Motion to 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 dismissed as moot, and the proposed Chapter 13 Plan is not confirmed.

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 May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis the following grounds:

1. Debtors' Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$2,765.00, and the Debtors are proposing a 1% dividend to unsecured claim holders. Debtors list real property at 1141 El Sur Way, Sacramento, California, on Schedule A with a value of \$1. The Debtor has provided the Trustee no estimated value to determine the liquidation analysis.

To determine the value of the Debtors' primary residence, an assistant to the Trustee visited the Sacramento County Assessor's office website's [assessorparcelviewer.saccounty.net](#). The website offers assessed values of real property. The most recent assessed values are dated September 30, 2013. As of that date, Debtors' property had an assessed value of \$738,282.

On Schedule D, Debtors list Wells Fargo Home Mortgage as lien holder on their residence at 1141 El Sur Way, Sacramento, but fail to list a lien amount. On May 19, 2014, HSBC/ Wells Fargo Home Mortgage filed Court claim No. 8, which indicates a lien totaling \$625,166.93 is secured by the real property. It appears based on this information that the debtors have equity in real property that is

not disclosed.

Debtors report that their assets are held in the Paul and Linda Fanfelle Family Trust and that the trust pays the ongoing mortgage payments toward the mortgage. Other property included in the trust is real property at 10200 Tinkers Court, Truckee, California, the contents of their residence, all other real property, all bank accounts, stock brokerage and other financial and securities accounts of any kind, including Wells Fargo Checking Accounts Nos. 3458, 7671, and 5585, which are not reported on Schedule B, Wells Fargo Savings Accounts Nos. 0783, 9396, and 2142, which are not reported on Schedule B and retirement accounts, pensions, and 401 accounts including Wells Fargo Nos. 2542, 3434, and 5738 which are also not disclosed on Schedule B.

2. Trustee argues that the Plan is not the Debtors' best efforts. Lynda Fanfelle operates multiple business, including three separate locations of yogurt shops, which appear to be operating at a loss each month. The Trustee has, however, received insufficient information relating to the businesses to determine the totality of the circumstances and has therefore, at the scheduled first meeting of creditors, continued the meeting as to Debtor Lynda Fanfelle to June 19, 2014 at 10:30 am to allow Debtor to supply sufficient information relating to each business and the income and expenses generated from such.
3. It appears that the attorney of record is Peter Macaluso, but the documents were not signed by counsel, so the Trustee is unable to confirm representation.
4. Schedule A lists liens against real property at 10200 Tinkers Court, Truckee, California totaling \$68,729.62. On Schedule D, Debtors report only a tax lien held by Nevada County for \$1,279.62. It appears that Debtors have not listed all debts related to this property.

At the Meeting of Creditors held on May 22, 2014, Debtors indicated that Mesa Leasing, Inc. listed on Schedule D as a lease cure-Arden, has an interest in the property which is in a trust. Debtors indicated that they used their Trust property as collateral to secure the lease. The Debtors' lost is also an asset of the Paul and Linda Fanfelle Family Trust, and the Trustee is not certain what property in the Trust and what debts are owed against the property.

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.

10. [12-33823](#)-C-13 JASON WENTZ MOTION TO MODIFY PLAN
SNM-2 Stephen N. Murphy 5-8-14 [[47](#)]

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 May 8, 2014. By the court's calculation, 57 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

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

11. [14-24025](#)-C-13 HELENA LEWIS
DPC-1 Linda D. Deos
Thru #12

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
5-27-14 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan relies on a pending motion. It appears that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Motion to Value the Secured Claim of Bank of America, LDD-1, is set for the same day as the hearing on this Objection.

The court is granting Debtor's Motion to Value, thus resolving Trustee's singular objection to confirmation of the Plan. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 21, 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.

12. [14-24025](#)-C-13 HELENA LEWIS MOTION TO VALUE COLLATERAL OF
LDD-1 Linda D. Deos BANK OF AMERICA, N.A.
5-2-14 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 2, 2014. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2824 18th Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$120,000 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 \$174,406. Creditor's second deed of trust secures a loan with a balance of approximately \$59,244. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2824 18th Avenue, 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 \$120,000.00 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 Debtors' and Debtors' Attorney on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtors did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 22, 2014. The Meeting has been continued to June 19 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtors' Plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are above median income and propose a 60 month plan paying \$626.20 per month, with no guaranteed dividend to unsecured claims (unsecured claims are to receive no less than 0.00%). Debtors have not reported all income. On Schedule I, Debtors report Mary Gutierrez's gross income being \$2,102.40; however, this is only two weeks' pay for the Debtor. Her monthly gross income on Form 22C shows Debtors' income to average \$4,55.20 per month, which is based on a review of her paystubs appears to be accurate. According to the paystubs, Debtors earn \$2,102.40 every two week which averages approximately \$4,555.20 per month.
3. All sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtors are \$626.20 delinquent in plan payments to the

Trustee to date and the next scheduled payment of \$626.20 is due on May 25, 2014. Debtors have paid \$0.00 into the plan to date.

4. Debtors list on their Statement of Financial Affairs #1, that the Debtor, Daniel Gutierrez, has earned \$10,800 in 2014 from Worker's Compensation. The Trustee is concerned that he currently has a pending workers compensation claim that is not reported on Debtors' Schedule B.

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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Office of the United States Trustee, and the Chapter 13 Trustee on May 9, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on May 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. 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 and determine creditor's secured claim to be \$13,200. 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 a 2011 Dodge Charger. The Debtor seeks to value the property at a replacement value of \$13,200 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 August 2011, more than 910 days prior to filing of the petition, with a balance of approximately \$18,000. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$13,200.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Safe Credit Union secured by an asset described as 2011 Dodge Charger is determined to be a secured claim in the amount of \$13,200.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$13,200.00 and is encumbered by liens securing claims which exceed the value of the asset.

16.	14-23028 -C-13	JASON/SHANNON MELFA	MOTION TO VALUE COLLATERAL OF
	MWB-2	Mark W. Briden	NATIONAL CITY BANK
			5-19-14 [26]

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, respondent creditor, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The 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 1417 Woodbridge Court, Redding, California. The Debtor seeks to value the property at a fair market value of \$170,000 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 \$193,000. Creditor National City Bank's (now known as PNC

Bank, N.A.) second deed of trust secures a loan with a balance of approximately \$48,000. 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 National City Bank secured by a second deed of trust recorded against the real property commonly known as 1417 Woodbridge Court, Redding, 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 \$170,000.00 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 Debtors (pro se) on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

1. According to the Trustee's calculations, the Plan will complete in 79 months as opposed to the 60 months opposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtors have proposed to pay approximately \$3,422.73 to Fast Auto, \$26,559.52 to Ally Financial, and \$6,170.40 (10%) toward unsecured claim holders for a combined total of \$36.152/65 but to propose to pay only \$29,040 over the term of the plan (\$484 times 60).
2. The Plan relies on pending Motions. The plan relies on the Motion to Value the Secured Claim of Ally Financial, which is set for hearing on June 10, 2014. The Motion was denied on that hearing date. Debtors' plan does not have sufficient monies to pay the claims in full.

The Debtors also propose to value the secured claim of Fast Auto Loans but have not filed the Motion to Value the Secured Claim of that creditor.

3. The Debtors' Plan does not meet the Chapter 7 Liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals

\$8,000.00 and the Debtors are proposing a 10% dividend to unsecured claim holders, or approximately \$4,017.00. The property that Debtors failed to exempt is interest in a FERS retirement account.

4. All sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtors are \$484.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$484.00 is due on June 25, 2014. Debtors have paid \$0.00 into the plan to date.

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 16, 2014. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, both the Chapter 13 Trustee and Creditor of the Debtors have filed opposition to confirmation of the plan.

TRUSTEE'S OPPOSITION

The Trustee opposes confirmation of the modified plan on the basis that the Debtors have not filed updated Income and Expense Schedules. Debtors propose a plan payment of \$56,689.66 total paid in through Month 30 (April 2014, where Debtor's petition was filed on October 3, 2011), then \$2,179.06 for the remaining 30 months. Debtors' plan payments under the confirmed plan are \$2,045.00 for 16 months, then \$2,179.06 for 44 months. The increase in the 17th month was due to a mortgage adjustment.

Trustee issued a Notice of Default on March 14, 2014. Dckt. No. 49. Debtor was delinquent \$4,358.12 with an additional payment due on March 25, 2014, for a total delinquency of \$6,537.18.

Debtors have filed a modified plan to cure the delinquency. Debtor's Motion, and Declaration, state that they fell behind because they have a home inspection business and business has been slow since last summer, but is starting to pick up and they expect it to increase to what they were making the first time they filed bankruptcy.

Debtors filed a copy of Schedule I, which was originally filed on December 12, 2011, Dckt. No. 20, and a copy of Schedule J, which was originally filed on October 3, 2011, as exhibits to their Motion. Dckt. No.

1. Debtors' Motion states that these schedules show that "they have disposable monthly income of \$2,045.00, which is within 10% of the modified plan payment of \$2,179.06."

But Debtors' most current income and expense statements were filed approximately 31 months ago to support a plan payment of \$2,045.00, not \$2,179.06 as proposed, and where Debtor is delinquent under the confirmed plan with the same plan payment, Debtor must file new Schedules I and J which are relevant to their current income and expenses.

OPPOSITION BY CREDITOR

USE Creditor Union ("Creditor") opposes confirmation of the proposed modified plan. Creditor is the holder of the first deed of trust on the Debtors' principal residence located at 5950 14th Street, Sacramento, California, and securing a loan in the approximate amount of \$267,633.00 as of October 2011. The current monthly payment is \$1,716.30, of which \$443.24 is for the impound.

Creditor is also the holder of the second deed of trust on the residence, securing a balance of approximately \$52,934.00 as of October, 2011. Creditor also has a security interest in the Debtors' 2007 Nissan Murano.

Each of the loans were treated in the Debtors' Chapter 13 Plan confirmed on December 30, 2011. Regular post-petition payments on the loan secured by the first deed of trust were to be paid by the Trustee, plus payments to cure the pre-petition arrears. Debtors successfully valued the property at \$226,000.00 and has stripped off Creditor's second deed of trust, which is treated as unsecured. Creditor is to receive the payments on a secured claim of \$4,856.46, representing the value of the vehicle.

As the Trustee pointed out in his opposition, the Plan is delinquent in the amount of \$6,437.18 as of March 31, 2014. Payments on Creditors car loan are delinquent in the amount of \$911.38. The proposed plan does not provide information about how plan payments will change and for what duration. Creditor expresses concern that because Debtors have been chronically delinquent 2-3 months on their plan payments, that Debtors lack the financial wherewithal to make payments as required by the plan. The inability to make all plan payments to the Creditor will have a greater effect on the Creditor because its loan secured by the principal residence is over four months in default.

Based on the Debtors' delinquency, uncertain ability to fund their plan payments, and lack of updated information on Debtors' current income and expenses, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

good cause appearing,

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

19. [14-20943](#)-C-13 ROBERT CAESAR MOTION TO VALUE COLLATERAL OF
RI-2 Rebecca E. Ihejirika GMAC MORTGAGE, LLC
5-20-14 [[43](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 20, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The 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 165 Gunnison Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$190,000 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 \$294,868. Creditor GMAC Mortgage, LLC's second deed of trust secures a loan with a balance of approximately \$30,404. 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 GMAC Mortgage, LLC secured by a second deed of trust recorded against the real property commonly known as 165 Gunnison Avenue, 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 \$190,000 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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of Debtors' modified plan on the basis that it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and because the Plan may not be feasible. Debtor is delinquent \$265.00 under the terms of the proposed modified plan.

Additionally, the modified plan is based upon Debtors receiving a permanent loan modification. Trustee states that Debtor has not received a permanent loan modification offer, but rather, a trial loan modification which was filed as Dckt. No. 37. The Class 1 creditor has filed a claim, Court Claim No. 1, indicating \$6,366.52 in mortgage arrears, which are included in the confirmed plan. \$5,091.52 remains to be paid to the arrears claim. The terms of any permanent loan modification are not known at this time, including whether arrears will be capitalized.

REPLY OF DEBTOR

Debtor states that they will be current on or before the hearing on this matter. Additionally, Debtor responds by stating that a permanent loan modification has been received by Debtor's Counsel and will be set for hearing once Debtor has reviewed and signed the loan.

As of June 20, 2014, Debtor has not filed any evidence showing that she is current on her plan payments, or documentation showing that Debtor has been offered a permanent loan modification. Therefore, the court will sustain the Trustee's objection and deny confirmation of the modified 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 denied without prejudice.

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 May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).
 - A. Income: The plan payment required is \$212,81. However, Debtor's budget does not support the plan payment. Debtor's Schedule J indicates monthly net income of \$63.00. Debtor admitted at the First Meeting of Creditors held on May 15, 2014, that her husband is a wage earner and is employed through the people or persons that bought his trucking business. This case was originally filed as a Chapter 7 on December 12, 2014, and was converted to Chapter 13 on March 24, 2014.

Therefore, the \$4,000 listed on Schedule I, Line #11, is his gross income. Neither Schedule I or J show any tax or medical deductions. His net income according to a profit and loss statement sent to the Trustee is \$2,834.27. However, this information covers the month of October 2012 to September 2013, and is based on his self-employment and not as a wage earner. To date, Debtor has not provided the Trustee with pay advices of her non-filing spouse.

- B. Classification of secured Creditors: The plan does not provide treatment to the following secured creditors listed on Schedule D:
- i. Toyota Financial for a 2013 Toyota Camry
 - ii. Toyota Financial for a 2013 Toyota Venza.
 - (1) Debtor admitted at the first 341 Meeting that these two automobiles have been surrendered. It appears that the creditor should be listed in Class 3.
 - iii. Western Truck Parks and Equipment Company: 2013 Volvo and 2005 Raven Flatbed trailer
 - iv. Western Truck Parts and Equipment Company: 2013 Volvo and 2005 Raven Van trailer.
 - (1) Debtor admitted at the First Meeting of Creditors that the secured creditors are being paid by a third party and believes the banks have agreed to said treatment, which Trustee is not aware of. Trustee is concerned for the potential liability the community may have, since Debtor has listed these debts on Schedule D, and Debtor's non-filing spouse appears to be still liable for the debts.
- C. Secured Not Provided for in Plan: Wells Fargo Bank filed a Claim on May 19, 2014, but is not listed on Schedule D or the Plan.
- D. Priority Claim Not Provided for in the Plan: Douglas M Whatley, the Chapter 7 Trustee appointed to this case, filed a priority Claim, Claim No. 1, in the amount of \$1,799.50, which is not listed on the Schedules or provided for in the plan.
2. Debtor's schedules are incomplete.

- A. The value of the Debtor's assets on Schedules B and C do not match. Schedule B appears to place a higher value of Debtor's property than what is listed on Schedule C. Trustee is not sure if the Debtor disclosed the correct balance of the bank accounts at the time of filing of the petition.

Neither Schedule B or C lists any account numbers for Chase. The Trustee received copies of two Chase Bank Account statements: Chase Account No. XXXX1000 dated November 30 to December 31, 2013, regarding Dan Olievskey DBA Transpro Specialized, and Chase Account No. XXX9730 dated June 26, 2013 through August 23, 2013 regarding Dan and Lulia Okievskey.

Trustee requested copies of all bank statements covering the 6 months pre-petition to current, but Debtor has not provided

copies of those statements.

- B. Statement of Financial Affairs: Questions Nos. 1, 2, and 3 are marked as none. Debtor is married and her spouse did not join in the filing of the bankruptcy; however, the non-filing spouse is the sole income earner in the Debtor's household. Debtor listed secured mortgage debt on Schedule D, which is in Class 4 of the plan and on Schedule J in the amount of \$1,700.00 per month; however, Question 3 is blank as to any payment to secured creditors within the 90 days prior to the filing of bankruptcy.

Question No. 14 lists a bank account with Chase Bank with a balance of \$51,110.39, listed as "Money held for parents. Account is in Nonfiling Spouses name only." Debtor admitted at the Meeting of Creditors that while her parents were in the process of immigrating to the United States, that they wired money to her, but that her spouse was handling the wire transfers. No information has been provided to the Trustee or the court to verify that the money in the accounts was or is from wire transfers from the parents.

- C. Debtor also admitted at the meeting that her spouse recently sold his trucking business, for which no information is provided on the Statement of Financial Affairs.
- D. Debtor failed to file the Rights and Responsibilities for her case.

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.

Local Rule 9014-1(f)(3) 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, parties requesting special notice, and Office of the United States Trustee on June 11, 2014. By the court's calculation, 13 days' notice was provided.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 Permit Debtor to Sell Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

MOTION DOES NOT COMPLY WITH THE REQUIREMENTS OF FRBP 9013

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

1. The Chapter 13 Debtor proposes to sell a 2006 930G Caterpillar Loader.
2. This case was commenced by the filing of a voluntary petition on behalf of the Debtor on February 24, 2014, and David P. Cusick has been duly appointed to serve as Trustee.
3. The Debtor's Plan has not yet been confirmed, however the Debtor is up-to-date with the terms and conditions of the Plan.
4. Debtor has determined that it would be "in the Debtor's best interest and the best interest of the Bankruptcy Estate to sell the subject property."
5. The Debtor wishes to sell the asset to Jared Dupruehas.
6. The Debtor is "confident that the funds received from Jared Duprue will be the best price that could be achieved in the sale of this kind of property in the current market conditions."
7. The Debtor is "aware that the sale of this property is necessary to

the feasibility of the Chapter 13 plan and that getting the best price will effect the feasibility of this Chapter 13 Plan."

The Motion to Sell 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 does not state the grounds for relief with particularity under Federal Rule of Bankruptcy Procedure 9013, because it does not state the terms of the proposed sale as necessitated by Federal Rules of Bankruptcy Procedure 2002 and 6004.

The Motion does not state the sales price, the exact identity of the buyer (whether he is an insider to the transaction, or an independent purchaser), the terms of the sale, proposed distribution of sales proceeds, and other relevant terms of the sale. There is no Purchase Agreement attached to the Motion or filed as an exhibit in support of the Motion, to enable the court to ascertain the terms of the sale, and whether they are reasonable and would be beneficial to the bankruptcy estate.

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."

REQUIREMENTS OF FEDERAL RULE OF BANKRUPTCY PROCEDURE 2002

Federal Rule of Bankruptcy Procedure 2002(c)(1) requires that notices of a proposed use, sale, or lease of property shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under §363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

Additionally, Local Bankruptcy Rule 3015-1(b)(1) states that debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor must comply with LBR 3015-1(i).

Local Bankruptcy Rule 3015-1(i)(4) provides that:

Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (A) The sale price represents a fair value for the subject property;
- (B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (D) The sale price is all cash;
- (E) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
- (F) The sale is an arm's length transaction.

Based on the evidence before the court, the court cannot determine whether the proposed sale is in the best interest of the Estate. Debtor offers no evidence in accordance with Local Bankruptcy Rule 3015-1 showing that the purchase price represents a fair value for the property, whether there are creditors with security interests in the property who will receive a portion of the sales proceeds, whether the costs of sale will be provided for, and the exact identity of the buyer, and whether he is an insider to the transaction, to the court.

OPPOSITION BY TRUSTEE

Trustee opposes the Debtor's Motion on the basis that the Motion does not include the terms of sale, and because there is insufficient information about the transaction.

Having provided scant evidence on the terms of the sale to the court, the court cannot determine whether the purchase agreement entered to sell Debtor's 2006 930G Caterpillar Loader, and the proposed distribution of the proceeds is reasonable and beneficial to the bankruptcy estate. Merely asserting that the sale is necessary to the feasibility of the plan does not enable the court to determine whether the sale will be in the best interest of the estate; additionally, Debtor appears to be again asking for a carve-out of the proceeds of the sale, ignoring the fact that the Debtor's Chapter 13 Plan and plan payment calculations have taken into account the Debtor's individual living expenses and income.

The Motion, which does not state Debtor's asserted grounds for relief with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, is denied.

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that Motion to Sell is denied.

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2014. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors.

The Chapter 13 Trustee filed a statement of non-opposition to the Debtors' Motion to Confirm, merely noting that the Trustee has received an escrow check from First American Title Company for \$228,864.49.

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 May 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.

24. [13-30667](#)-C-13 FELICIA LAUESE OBJECTION TO CLAIM OF TD BANK
CRG-10 Carl R. Gustafson USA, N.A., CLAIM NUMBER 6
Thru #25 5-5-14 [[132](#)]

Final Ruling: The Debtor having filed a "Withdrawal of Objection to Claim No. 6 of TD Bank USA, N.A." for the pending Objection to Claim, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Objection" 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 Claim, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Claim.**

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

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

An Objection to Claim 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 Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Claim is dismissed without prejudice.

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, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c) (1) and (d) (3). 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 8 of Cavalry SPV I, LLC as assignee of HSBC Consumer Lending USA Inc/Bene is sustained and the claim is disallowed in its entirety. No appearance required.

Debtor objects to Proof of Claim No. 8 of Cavalry SPV I, LLC as assignee of HSBC Consumer Lending USA Inc/Bene. Felicia Lois Lauese ("Debtor") filed her Chapter 13 case on August 13, 2013. Cavalry SPV I, LLC as assignee of HSBC Consumer Lending USA Inc/Bene ("Claimant") filed a proof of claim in this case, No. 8 on the claims registry and filed on October 1, 2013, alleged an unsecured interest in the amount of \$1,093.84 for a "Consumer Loan" account number ending in 6169. Debtor argues that the Statute of Limitations bars allowance of the Claimant's Proof of Claim.

According to Claimant's proof of claim, Debtor made her last transaction on August 29, 2007. Debtor made her payment on August 29, 2007. Dckt. No. 138. Claimant charged-off the account on July 31, 2010. According to Claimant's Statement of Account, the Debtor has not made any transactions or payments since August 29, 2007.

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).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer loan, and does not report anything else and attaches no supporting documentation, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to hold an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the last payment and transaction in the subject claim was August, 2007. The second part of the Creditor's Proof of Claim indicates that the last payment date was August 29, 2007, and the account charge off date was on July 31, 2010. Dckt. No. 138. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established by California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. 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 Portfolio Investments II, LLC, Creditor filed in this case by Gregory Wyatt and Elisa Wyatt, Chapter 13 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 Cavalry SPV I, LLC as assignee of HSBC Consumer Lending USA Inc/Bene is sustained and the claim is disallowed in its entirety.

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 April 11, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The court notes that Debtor's original Certificate of Service, Dckt. No. 38, indicated that the Motion and supporting pleadings were served on the parties in interest on November 18, 2013. This has since been corrected in Debtor's Second Amended Proof of Service. Dckt. No. 42. Since the typographical error in Debtor's original Proof of Service did not prejudice the notice period given to the parties to respond to the Motion, and the parties were still given 39 days to respond to the present Motion, the court will waive the defect.

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 Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Value the Secured Claim, and the amount of the secured claim of Creditor is determined to be \$0.00. 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:

MAY 20, 2014 HEARING

The court continued this matter to this hearing date to permit secured creditor Wahoo Investments, LLC ("Creditor"), to perform an appraisal of the property located at 7857 Whisperwood Way, Sacramento, California. Civil Minutes, Dckt. No. 47. Creditor opposed the Motion to Value the Secured Claim on the basis that there is still equity remaining in the subject property to secure its second deed of trust.

Creditor did not offer a competing valuation for the court's consideration at the time of the original hearing, instead requesting additional time to obtain a full appraisal report that includes an inspection of the property. Creditor asked that the hearing be continued for 45 days to allow Creditor the opportunity to complete an interior appraisal of the property. Dckt. No. 40.

REVIEW OF MOTION

Debtor seeks to value the secured claim of Wahoo Investments, LLC. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7857 Whisperwood Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$159,566.00 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 \$336,352.00. Creditor Wahoo Investments, LLC's second deed of trust secures a loan with a balance of approximately \$40,785.37. Therefore, Debtor argues that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. Debtor argues that the creditor's secured claim should be 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).

STIPULATION BY BOTH PARTIES

The parties have entered a stipulation, agreeing that the Creditor's claim will be treated as an allowed unsecured claim, and shall be paid pro-rata through the Debtor's Chapter 13 Plan. The parties agreed that Creditor shall retain its lien for the full amount due under the deed of trust, in the event of either the dismissal of the Debtor's Chapter 13 case, or the conversion of the Debtor's Chapter 13 case to any other chapter under the Bankruptcy Code. It is further stipulated that upon the entry of the order approving this stipulation, that Debtor shall be responsible for direct payment of taxes and insurance. The Debtor will maintain insurance with respect to the subject property, and Creditor will remain the named loss payee and/or additional insured.

It is further stipulated that the Creditor or its successor in interest shall only be required to release its lien upon completion of the Debtor's Chapter 13 Plan, and that upon receipt of the Debtor's Chapter 13 discharge and completion of her Chapter 13 Plan, Creditor shall release and re-convey the Deed of Trust within a reasonable time. It is stipulated that the property shall not be sold prior to the end of the case without seeking court approval, and that Creditor shall retain its lien for the full amount due under the deed of trust, should the property be sold or should a refinance take place prior to the completion of the Chapter 13 Plan.

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

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

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

IT IS ORDERED that pursuant to the parties' stipulation, the Motion pursuant to 11 U.S.C. § 506(a) is

granted and the claim of Wahoo Investments, LLC, secured by a second deed of trust recorded against the real property commonly known as 7857 Whisperwood 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.

IT IS FURTHER ORDERED that pursuant to stipulation, the Debtor shall be responsible for direct payment of taxes and insurance. The Debtor will maintain insurance with respect to the subject property, and Creditor will remain the named loss payee and/or additional insured.

IT IS FURTHER ORDERED that pursuant to the parties' agreement, the Creditor or its successor in interest shall only be required to release its lien upon completion of the Debtor's Chapter 13 Plan, and that upon receipt of the Debtor's Chapter 13 discharge and completion of her Chapter 13 Plan, Creditor shall release and re-convey the Deed of Trust within a reasonable time. It is stipulated that the property shall not be sold prior to the end of the case without seeking court approval, and that Creditor shall retain its lien for the full amount due under the deed of trust, should the property be sold or should a refinance take place prior to the completion of the Chapter 13 Plan.

27. [14-23667](#)-C-13 GERALD/KRISTEN WILLIAMS
DPC-1 Seth L. Hanson
Thru #28

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
5-21-14 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b).
 - A. Kristen's Income: Schedule I lists Kristen's gross monthly as \$5,547.64. Based on her year to date gross income, it appears that her gross income is approximately \$6,575.20. Exhibit A. The transaction report provided by the debtors is not clear to the Trustee.

The Trustee received this report and other business documents on or around May 15, 2014 at 9:20 am, the same day as the First Meeting of Creditors. The Debtors did not timely provide any of the business documents required in the Business Case Questionnaire.

- B. The following items on the Transaction Report are not clear to the Trustee:

1.) Pages 1 and 2 contain numerous "draws" Amazon and Amazonmarketplace.com" It is not

clear why these draws occurred and what or how the items purchased were used.

2.) Page 2: DirecTV Cable and Television Services are listed at a total of \$602.34 from October of 2013 through March of 2014 or an average per month of \$100.39. schedule J lists \$89.00 on line #6c.

3.) Pages 2-4: Clothes : \$4,175.06 from September of 2013 through March of 2014, or an average of \$596.44 per month. Schedule J lists \$200.00 on Line #9.

4.) Pages 4-8: Food: listed at \$7,320.36 and household expenses on Pages 8-9: listed at \$1,062.55 for a total of \$8,382.91 or \$1,197.55 per month. Schedule J lists the debtors food/housekeeping expense at \$800.00.

5.) Pages 0-10: Medical Expenses / Co Pays: listed at \$1,087.24 from September 2013 to February 2014, or an average of \$181.21. Schedule J lists \$150.00 on Line #11.

6.) Page 10: Misc: \$696.61 or \$116.11 per month. The Debtors' Misc. expenses appear to include entertainment, personal, and pet care--all of which are included on Schedule J.

7.) Pages 11-12: Sporting Goods: \$2,097.61 from September 2013 to March of 2014, or an average of \$299.66 per month. It appears that the Debtors categorized sporting goods in lieu of recreation and entertainment. This expense appears inflated when included with Item #6 above and the fact that Schedule J lists \$187.29 on Line #12.

It appears that the Transaction Report lists both personal and corporate expenses. It is not clear if the Debtors can make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a) (6).

- C. The Profit and Loss Statement provided to the Trustee on May 15, 2014 are not clear to the Trustee on Page 1: Reimbursed Expenses: and Car Rental Expenses; Page 2: Interest Mortgage and Professional Fees; and Page 3: Travel, Entertainment, Lodging, and Uncategorized Expenses.
- D. Combined Monthly Income is Not Accurate: As stated above, Kristen's gross income is understated by \$1,000.56 and Line \$5h of Schedule I lists a garnishment of \$318.52 coming out of her income. This deduction should no longer be deducting, which adds the \$318.52 back to the combined monthly income of the Debtors.
- E. Recent Purchase of Vehicle: Debtors purchased a 2013 Infiniti JX35 on January 14, 2014 for \$47,181.79. Debtors listed the vehicle on Schedule D with a loan balance of \$34,248.00 owing to creditor Nordstrom Federal Credit Union, and a value of \$34,000.00. The vehicle is listed in Class 2A of the plan

to be paid a monthly dividend of \$435.00. Trustee is unaware of the efforts made by Debtors prior to the purchase of this particular vehicle. Nothing in the records reflects if they considered or the fifieth, or if this was the best deal they could find. Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325 (a)(6).

2. Debtors' plan relies on the Motion to Value the Collateral of USAA Federal Savings Bank, which will be granted by the court on this hearing date. Thus, this portion of the Trustee's objection is resolved.

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 - 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 15, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7030 Morningside Dr., Granite Bay, California. The Debtor seeks to value the property at a fair market value of \$415,031 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 \$652,321. Creditor USAA Federal Savings Bank's second deed of trust secures a loan with a balance of approximately \$98,226. 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

June 24, 2014 at 2:00 p.m.

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 USAA Federal Savings Bank secured by a second deed of trust recorded against the real property commonly known as 7030 Morningside Dr., Granite Bay, 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 \$415,031.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29.	<u>14-23369</u> -C-13	JESUS/TERESA BECERRA DPC-1 Thomas O. Gillis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-27-14 [<u>25</u>]
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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 and Office of the United States Trustee on May 27, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) 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. No appearance required.

Subsequent to the filing of this Motion, the Debtors filed a Withdrawal of the Chapter 13 Plan filed on April 15, 2014, Dckt. No. 11. Debtors state that an amended plan will be filed to address the Trustee's concerns. 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 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 dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

30. [14-23370](#)-C-13 CRISPIN SCHROEDER MOTION TO CONFIRM PLAN
SDH-1 Scott D. Hughes 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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has 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 May 12, 2014 is confirmed, and

June 24, 2014 at 2:00 p.m.

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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.

31. [14-22771](#)-C-13 POLY WESTER MOTION TO CONFIRM PLAN
SAC-1 Scott A. CoBen 5-1-14 [[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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has 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 May 1, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order

June 24, 2014 at 2:00 p.m.

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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.

32. [14-23371](#)-C-13 DOUGLAS/BEVERLY LEWIS OBJECTION TO CONFIRMATION OF
DPC-1 Gary D. Greule PLAN BY DAVID CUSICK
Thru #33 5-21-14 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on May 21, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) 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. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on May 22, 2014. Dckt. No. 26. 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 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 dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

33. [14-23371](#)-C-13 DOUGLAS/BEVERLY LEWIS
MDE-1 Gary D. Greule

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
4-9-14 [[11](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) 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. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on May 22, 2014. Dckt. No. 26. 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 Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

*

34. [12-35874](#)-C-13 ANTHONY/EUNICE LYLE
CA-4 Michael David Croddy

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CRODDY AND
ASSOCIATES, P.C. FOR MICHAEL D.
CRODDY, DEBTORS' ATTORNEY(S)
5-31-14 [[58](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on May 31, 2014. By the court's calculation, 25 days' notice was provided. 21 days' notice is required.

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

The court's tentative decision is to continue the Application for fees to [time] at [date]. 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

Michael Croddy, Counsel for the Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period July 18, 2012 through May 31, 2014.

Description of Services for Which Fees Are Requested

In the pre-confirmation period, Counsel met with Debtors, prepared and filed documents, and attended the Debtors' Meeting of Creditors. Counsel spent 10.30 senior attorney hours on his case, and 2.20 hours on performing these tasks. Counsel also claims 9.40 "legal assistant" hours to assist Debtors in filing a bankruptcy due to "high income and debt."

Counsel explains that he was retained and has served as an attorney for the Debtors since August 25, 2012. Prior to the filing of the case, applicant received \$4,281.00. Counsel contends that the fees and costs previously allowed were not sufficient to fully compensate the attorney for the legal services rendered. The report of time and expenses cover all services rendered to the Debtors in connection with this Chapter 13 case since the date the applicant commenced rendering services. The motion seeks

approval of \$5,642.50 in fees and \$427.58 in costs. After application of the \$4,000 retainer and \$281 paid to counsel for the filing fee, a total of \$1,789.08 in additional compensation is sought.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney

"free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

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

Id. at 959.

A review of the application shows that Counsel's services rendered a successful confirmation of the Chapter 13 Plan. Counsel advised his clients in an initial consultation in which Debtors and Counsel collectively determined that filing a Chapter 13 bankruptcy due to high income and debt would be best. Counsel reviewed budget information and prepared an evaluation of the fair market value of Debtors' properties to prepare the schedules and voluntary petition and Chapter 13 Plan. Counsel filed and prosecuted the confirmation of an Amended Plan that was confirmed on February 7, 2013. The court finds the services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$375.00 for Senior Attorney fees, \$275.00 for Associate Attorney fees, \$125.00 for legal assistant fees, and \$50.00 for clerical fees. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$5,642.50 in fees are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case, with a deduction made for the \$4,000.00 retainer fees and \$281 in filing fees already paid to counsel.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of \$427.58 in costs. These costs are questionable to the court, since the Motion and Counsel's Billing Sheets, attached as exhibits in support of the Motion, Dckt. No. 61, provide no explanation of the costs sought. Counsel is expected as part of its hourly rate to have the necessary and proper legal resources available to provide the representation. For neither of these was there any information provided to the court that these were extraordinary expenses than one would expect for counsel representing a trustee or debtor in possession in this court. Absent an explanation, counsel representing parties in a bankruptcy case can anticipate such add on charges to be summarily denied as expenses which the court expects to be included as part of the standard services justifying the hourly billing rates. The entries listing the costs on Counsel's billing documents contain no details about the costs in the description costs, only descriptions of the tasks associated with the submitted court pleadings.

Dckt. No. 61.

The total costs in the amount of \$427.58 are not approved. Rather, the court will continue this Motion to allow Counsel to file additional documentation and evidence, detailing precisely when, what, and for what items and exact costs were incurred by Counsel in his representation of the Debtors in their bankruptcy case.

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

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

The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to [date] at [time] to allow Counsel to supplement the instant Motion with a detailed explanation of the \$427.58 in costs sought in this Motion.

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed opposition to confirmation of the Third Amended Plan.

OPPOSITION BY TRUSTEE

Debtors may not be able to make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Trustee expresses two primary concerns with confirmation of the Plan. First, Trustee is uncertain that the Debtors have the ability to increase the payments as called for by the plan. In order to support their plan, Debtors propose that Lisa Abila get a second job. The plan calls for an increase in plan payments from \$560 to \$680 in the 3rd month and then to \$800 in the 8th month. Debtors have not provided any information supporting whether Lisa Abila has been able to secure a second job. On Schedule I, Debtors have increased their income by \$400 and have begun making payments of \$680 effective February, 2014. The Trustee is concerned that Debtors may begin defaulting on household expenses, as the plan proposes to increase to \$800.00 effective on August 25, 2014, if Debtor has not yet found a second job.

Second, Debtors appear to desire to purchase a second, replacement vehicle. In Section 6.01--Additional Provisions of the Plan, Debtors indicate that will fund increases with a second job, and will replace the leased vehicle for less than \$10,00.00 cash without further order. The Trustee does not have the authority to authorize Debtors to purchase vehicles without prior authorization of the court. On Schedule J, Debtors

deduct \$160.00 per month for savings for replacement vehicle, to replace the leased vehicle which will be surrendered at the end of the pending 36 month lease. Debtors should be required to provide the Trustee with quarterly reports of the balance of the savings and these funds should be placed in a sole and separate account for the purpose of saving for a car only.

RESPONSE BY DEBTORS

Debtors reply by stating that Debtor Lisa Abila began looking for work in March, but became ill in April requiring hospitalization, and returned to work in May. During this time, she submitted around 20 applications mostly online, and visited a few places to apply or inquire about job openings. The stress of looking for work, of the uncertainty of this plan, and her illness all made it more difficult for her to be in the right place at the right time to find extra work. Debtor is now in the state of mind where she can focus more intently on finding work.

Debtor states that she believes that she can apply for 20 jobs a month as well as visit a few places each month, which at "least triple her chances of finding work over the next few months." Debtors acknowledge that it will be difficult for the Debtors to make the increased plan payment until they find work. However, it is only an increase of \$120 a month, and Debtors believe they will substantially comply with the plan. Over the next five years, the Debtors see no reason why they cannot fully comply with all terms of their plan.

Debtors reaffirm their commitment to making all payments required by the plan, to the extent that they will eat "top ramen for dinner every night until they find extra work." Debtor's plan proposes to purchase a replacement vehicle for less than \$10,000 when their lease expires in 2016. If the court approves the provision for Debtors' replacement vehicle, Debtors will insert such language in the confirmation order. If the court does not approve the provision, the Debtors state that they will say in the confirmation order that Debtors are required to seek future permission to purchase a vehicle later. Debtors assert that they will be able to save the \$160 month once they find extra work, and offer to start a separate bank account and provide quarterly reports of their savings for transportation if the court so desires.

The court considers Debtors' efforts in searching for additional work, and Joint Debtor Lisa Abila's diligence in applying to at least 20 jobs a month to afford the proposed increase of \$120 per month in plan payments. Declaration of Lisa Abila, Dckt. No. 79. The Debtors appear to understand the consequences of not finding a secondary job, and defaulting on household expenses as the plan calls for a gradual increase in plan payments, which will reach \$800.00 by August of 2014. The court is satisfied that Debtors have made a commitment to pay the increased payments called for under the plan, and that Debtors will secure additional income and funding to afford all increased payments that will come due under the plan. 11 U.S.C. § 1325(a)(6).

Additionally, Debtors state that they will need to replace their Toyota Highlander by October 2016, as the lease will expire on that date. When Debtors wish to purchase a replacement vehicle when their current automobile lease expires, Debtors will be required to file a Motion to Incur Debt, pursuant to Federal Rule of Bankruptcy Procedure 4001(c). Rule 4001(c) requires that the motion list or summarize all material provisions

of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). A copy of the agreement shall be provided to the court, so that the court can 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 Debtors will be required to add language in their order confirming the Chapter 13 Plan, confirming their understanding that their purchase of a replacement vehicle will require the Debtors to file a incur post-petition debt, in order to obtain court authorization of a purchase of a new vehicle pursuant to the requirements of Federal Rule of Bankruptcy Procedure 4001(c).

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, and Debtors' Chapter 13 Plan filed on April 29, 2014, amended to include a statement of the Debtors' understanding that court authorization pursuant to the requirements of Federal Rule of Bankruptcy Procedure 4001(c) to purchase a replacement vehicle, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 3007-1(c)(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. Forty-four days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1). 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 Bank of American, N.A. allow the claim. 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 Proof of Claim at issue, listed as claim number 8 on the court's official claims registry, asserts \$51,017.55 claim. The Debtor objects to the Claim on the basis that the claim was filed after the date set for filing claims pursuant to FRBP 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).

Here, Debtor objects to the late filed proof of claim of Bank of America, N.A. The deadline for filing a Proof of Claim in this matter was January 2, 2014. The creditor's claim was filed April 9, 2014.

On March 6, 2014, Creditor filed a Motion to Allow Late Claim. The court entered a Civil Minute Order on April 14, 2014 denying the Motion without prejudice to Creditor filing a proof of claim. The court noted that its order does not touch on the propriety or authenticity of such a proof of claim.

Creditor's Opposition

Creditor requests that the court allow it's late filed proof of claim. On October 16, 2013, the court entered a Civil Minute Order valuing the balance of Creditor's secured claim at \$0.00 with the balance of the claim to be general unsecured, paid through the confirmed plan.

On August 29, 2013, Debtor filed a proposed Chapter 13 plan and included the treatment of the secured portion of Creditor's claim in Class2, where the value is \$0.00 but the claim was \$50,627. And included that unsecured portion in Class 7 to be paid a 1% dividend.

The amount reflected in the plan, Class 7 was a total of \$52,925. Debtor's Schedules A and F include Creditor's with an unsecured claim of \$50,925. The total amount of Debtor's Schedule F unsecured debt is \$2,298. Therefore, Creditor asserts it is clear that the \$52,925 combined in Class 7 of the plan included Creditor's unsecured claim from Schedule A.

The Order Confirming the Plan was entered October 28, 2013.

Creditor argues that the allowance of the late filed claim does not prejudice the estate because the claim was provided for in the confirmed Chapter 13 Plan.

Debtor's Response

Debtor argues that the Creditor failed to follow the rules and the claim should not be allowed.

Discussion

The court's decision is to allow the claim in its entirety. The court retains the right to extend the time for filing a proof of claim for cause. FRBP 3003(c)(3). Here, the court is cognizant of the fact that Debtor prepared and confirmed a plan that clearly contemplated treatment of the claim at issue. Debtor caused a Motion to Value the secured value of the claim to be decided, provided for treatment of the claim in Classes 2 and 7 of the plan, and confirmed a plan with treatment of the claim included.

The court denied a Motion to Allow Claim by Bank of America, N.A. without prejudice to filing a proof of claim. The court reviewed Bank of America, N.A.'s proof of claim and is convinced of its authenticity given the extensive documentation attached to the proof of claim form.

There is no prejudice to the Debtor or the estate in allowing this claim as Debtor prosecuted and confirmed a plan with treatment of this claim in mind.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Asset Acceptance LLC filed in this case by Debtor having been presented to the court,

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

IT IS ORDERED that the objection to Proof of Claim number 8 of Bank of America, N.A. is overruled.

37. [14-23881](#)-C-13 DONNA WALKER
DL-1 Mikalah R. Liviakis
OBJECTION TO CONFIRMATION OF
PLAN BY SACRAMENTO MUNICIPAL
UTILITY DISTRICT
6-4-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on June 4, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 Sacramento Municipal Utility District objects to confirmation based on the following:

1. SMUD filed a proof of secured claim in the amount of \$1,659.87. (Claim 2). The claim arose from a purchase-money loan by SMUD to Debtor for goods which became fixtures. It is secured by a lien on real property owned by Debtor located at 6253 Cavan Drive, #1, Citrus Heights, California. The contractual interest rate at the time of the filing was 7.5%.
2. It appears from the terms of the plan that SMUD will be paid a total of \$5,480.28, but the claim amount according to the plan is only \$1,659.87 with an interest rate of 0.00%. SMUD is objecting to the plan to avoid future confusion as to the amount to be paid under the terms of the Plan and to object

to its claim being paid with an interest rate of 0.00%.

3. The plan does not comply with 11 U.S.C. § 1325(a) as it decreases the amount of the interest rate on the secured claim such that the value of plan payments would be less than the allowed amount of the claim, in violation of 11 U.S.C. § 1325(a) (5) (B) (ii).

The court's decision to sustain the objection. The court recognizes that the effect of treatment under the plan regarding SMUD may be appropriate, but agrees that the contradictory information in the plan is confusing and should be remedied before confirmation is considered.

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.

38. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA MOTION TO AVOID LIEN OF DAWN
MRL-3 ALICE MAY LORRAINE MCGRATH
Mikalah R. Liviakis 6-7-14 [[45](#)]

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 creditors, and Office of the United States Trustee on June 7, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 deny the Motion to Avoid a Judicial Lien 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::

A judgment was entered against the Debtor in favor of Dawn Lorraine McGrath for the sum of \$24,843.02. The abstract of judgment was recorded with Nevada County on March 7, 2014. The property Debtor asserts the lien attached to is 910 Branciforte Street, Vallejo, California.

The court's decision is to deny the Motion. The Abstract of Judgment was recorded against property located in Nevada County. Debtor's real property is located in Vallejo, California, in Contra Costa County. Debtor presented the court with no evidence that she holds title to property in Nevada County that is subject to the Creditor's judgment lien.

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 Motion is Denied without prejudice.

39. [13-32690](#)-C-13 CRAIG CARLSON MOTION TO CONFIRM PLAN
JGP-3 Jim G. Price 4-30-14 [[76](#)]

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 30, 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 23, 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 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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 7, 2014. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1). 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 2 of Asset Acceptance LLC is sustained and the claim is disallowed in its entirety. No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 2 on the court's official claims registry, asserts \$16,802.28 claim. The Debtor objects to the Claim on the basis that the claim and the attachments appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. .

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).

The courts decision is to sustain the objection and disallow the claim. The court notes that no response was filed by Creditor. The claim is appears to be based on a written agreement whereby Creditor agreed to loan Debtor a sum of money. Pursuant to FRBP 3001(c)(1), a claim based on a writing must include a copy of the writing filed with the proof fo claim. Here, all that is filed with the proof of claim is an itemized statement of principal due plus interest, a redacted accounts sheet, and a statement of assignment of the loan. The agreement evidencing the loan is not attached.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. 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 Asset Acceptance LLC filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 2 of Asset Acceptance LLC is sustained and the claim is disallowed in its entirety.

41. [14-23393](#)-C-13 JOSEFINA MEZA
DPC-1 Michael David Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
5-21-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on May 21, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 because Debtor did not file her tax returns during the 4-year period preceding the filing of the petition. 11 U.S.C. § 1308; 11 U.S.C. § 1325(a)(9).

Debtor's Response

Debtor filed a statement not opposing the Objection and admitting that the plan is unconfirmable at this time.

The court's decision to deny confirmation. Debtor admits the plan is not confirmable. 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.

42. [14-25796](#)-C-13 ROBERT/JILL VOSBERG MOTION TO EXTEND AUTOMATIC STAY
ALF-1 Ashley R. Amerio 6-10-14 [[12](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 10, 2014. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-24868) was filed on May 8, 2014 and dismissed on May 27, 2014, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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 argues that in the prior case, all required documents were prepared on time and Debtor was ready to move forward with prosecution of their case; however, an error occurred that resulted in the filing of only partial documents. Debtor argues that the inadvertent failure to file all required documents did not become known to the Debtors' attorney until after the dismissal order was entered.

Debtors' counsel argues that administration of the present case will be facilitated by extension of the stay out to the date of discharge.

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, unless terminated by 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, unless terminated by further order
of this court.

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 29, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on April 29, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.