UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 10, 2013 at 3:00 p.m.

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1. 10-43503-E-13 ROBERT/CHANDAR PAL
SDB-2 W. Scott de Bie
MOTION TO APPROVE LOAN MODIFICATION
8-6-13 [60]

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 August 6, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

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

JPMorgan Chase Bank, National Association, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $653.62 to $503.10. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.000% to 3.628% over the next 24 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Robert U. Pal and Chandar Kiran Pal, Debtors, are authorized to amend the terms of their loan with JPMorgan Chase Bank, National Association, which is secured by the real property commonly known as 225 Delaware St., Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "C," Docket Entry No. 63, in support of the Motion.

2. 12-24804-E-13 DENNIS/JEANETTE HAMANN — MOTION TO CONFIRM PLAN
DRE-7 — D. Randall Ensminger — 7-19-13 [102]

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 July 19, 2013. By the court's calculation, 53 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 opposes the motion on the basis that the present plan is not proposed in good faith for several reasons.

First, the Trustee states the prior plan was denied because the Debtor did not provide evidence their mortgage payment had increased from $1,420.00 to $1,516.00 and now Debtor indicates their average monthly mortgage expense is $1,404.48.

Second, the Trustee states that financial information provided by the Debtors is conflicting and incomplete. On Form 22C the Debtors state under penalty of perjury that their respective gross wages were an average of $3,262 and $2,000 a month during the six months preceding the commencement of this case. Dckt. 1 at 8-9. Therefore, the Debtors compute their Annualized Current Monthly Income to be $63,144.00 for a household of three persons. This would be just $2,906.00 less than the Applicable Median Family Income for the Debtors. *Id.* at 9. The Debtors' family unit of three persons consists of the Debtors and a 76 year old father. Schedule I, Id. at 32. While listing the 76 year old father on Schedule I as a "dependant," no income is shown for the father and none is taken into account in connection with the computation of Annualized Current Monthly Income. No evidence is provided as to why the 76 year old father is a "dependant" and is without any financial means. If the Debtors, with a family unit of two persons are over-median income debtors, then they have failed to properly complete Form 22C and the computation of the minimum required distribution to creditors holding unsecured claims. 11 U.S.C. § 1325(b)(1)(B).

This bankruptcy case was filed on March 12, 2012. On the Statement of Financial Affairs the Debtors fail to disclose under penalty of perjury the income they had in 2012 for the months of January and February 2012. Statement of Financial Affairs Questions 1 and 2, Dckt. 1 at 36. The Debtors further state that in 2011 they had a combined income of 81,631.00. Statement of Financial Affairs Questions 1 and 2, *Id.* Further, that in 2010 the Debtors state under penalty of perjury that they had income of only $3,495.00 in 2010. *Id.*

The Declaration filed in support of the current Motion to Confirm the amended plan does not provide any clarifying information as to the Debtors' income and there is no information about the 76 year old father being claimed as a "dependant." Dckt. 108.

Third, the Trustee states after he received the updated paystubs for Debtors and balances on retirement loans which Debtors have deducted from their payroll. The Trustee discovered that Dennis' income was $300 higher per month than reported and Jeanette's retirement loan had been paid off in February 2013. Trustee states Dennis' loan will be paid off July 2015, which is the 39th month of the plan. The Trustee obtained this information only after the Debtors' prior proposed plan was confirmed. This current information now attested to by the Debtors as to their income is inconsistent with their testimony under penalty of perjury in their declaration to try and confirm the prior proposed plan. Declaration filed April 15, 2013, Dckt. 86.

Fourth, the Trustee argues that the Debtor proposes a 60 month plan paying $550 for 6 months, $480 for 9 months and $680 for 45 months paying no less than .4% on an estimated $84,994.99 unsecured total. Trustee argues that

the plan has a small dividend to unsecured claims so any increase changes the dividend significantly.

Fifth, the Trustee states the proposed payment should have increased by $680.00 but only increased by $130.00.

Sixth, the Trustee does not oppose the Debtors' increase in medical/dental expense due to Mrs. Hamann's need for dental care. The Trustee states he does oppose the Debtor's desire to increase their voluntary contribution to retirement accounts while in bankruptcy absent showing sufficient evidence of the need for such income.

DEBTOR'S RESPONSE

The Debtors offer the testimony of Dennis Hamann as to his medical condition and the limitation on his ability to continue to work. Declaration 113. The only other response to the Opposition are the arguments of counsel in a Reply, which contend,

A. The Debtors did not voluntarily increase or decrease their monthly mortgage payment, but that it was done by the lender.

B. The Debtors' income has decreased dramatically since 2012, which was one of the reasons for the Debtors filing this bankruptcy case. FN.1.

FN.1. Based on the prior statements of the Debtors under penalty of perjury this contention appears to be inconsistent with the evidence in this case. In the declaration in support of the present the Debtors' testify that their average monthly income is $3,910.00. Declaration, Dckt. 104 at 3. The Debtors do not provide any information as to what time period they have averaged their income, whether it includes prior months or is a projection going forward, or the "deductions" which they have taken from the gross income.

C. If the Debtors cannot confirm this plan they will have to convert the case to one under Chapter 7, and then the creditor with general unsecured claims will receive $0.00.

DISCUSSION

This case presents the court with some troubling fact – the existence of which may raise significant issues for the Debtors whether they attempt to prosecute their case under Chapter 13 or bail out to Chapter 7 if they cannot force the court to confirm a plan with a financially non-existent payment to creditors holding general unsecured claims.

First, the Debtors contention that they are under-median income debtors is suspect. They list a 76 year old father as a "dependent." No income of any sort is listed for this "dependent" – no retirement, no Social Security, no benefits, no assistance. Second, the Debtors state under penalty of perjury that there was no income in 2012 prior to the commencement of this case, but do state that they had currently monthly income of $5,262.00 over the six month preceding the case. Dckt. 1 at 8-9. If the Debtors had $0.00 of income in January and February 2012, then for the September, October, November, and

December 2011 they would of had to average $7,893.00 a month in income. No evidence has been provided as to this heightened income for those four months.

Third, on Schedule I the Debtors list $5,700 a month as gross income (which includes $803 a month average of overtime for Dennis Hamann. Dckt. 1 at 32. No qualification for this income is provided in response to Question 17 on Schedule I. The Debtors do list $470 a month in deductions for 401K contributions and $381 a month for 401K loan payments. The Debtors now "net" their income to $3,910.00, but do not provide the court with an explanation of how they get to this net number. Some of it may be explained in the narrative about having made 401K loan payments, then at least one of the loans paid off, and then the Debtors wanting to use that payment money to reasonably increase their going forward 401K contributions. Further, it may be that some of this information is buried in the multiple prior declarations of these Debtors, the Schedules, and the Statement of Financial Affairs if only the court would assemble and state that information for the Debtors. The court declines such opportunity, and it appears that this portion of the financial information has been presented in less than a clear manner to the court.

Fifth, the court is unsure as to whether the Debtors' contention as to expenses is reasonable or accurate. The most recent statement of expenses, compared to the information on Schedule J, is,

Expense	July 19, 2013 Declaration, Dckt. 104	Schedule J, Dckt. 1 at 34
Mortgage, Insurance, Taxes	($1,404)	($1,455)
Electricity and Heating Fuel	($200)	($200)
Water and Sewer	($50)	($50)
Telephone	($150)	($150)
Cable, Internet	($100)	($100)
Home Maintenance	($60)	($20)
Food	($600)	($550)
Clothing	($60)	($50)
Laundry and Dry Cleaning	($25)	($25)
Medical and Dental	($150)	($50)
Transportation	($170)	($150)
Recreation	($50)	($150)
Auto Insurance	($210)	($210)

Using the Schedule J expenses and the Schedule I income, the Debtors stated that they had $549.00 of Monthly Net Income. Schedule J, Dckt. 1 at 34. This

was based on the Debtors having the $3,060 in Average Monthly Income as shown on Schedule I. Dckt. 1 at 32.

Without explanation, the Debtors have purport to have increased their average monthly income to $3,910.00 and purport to being able to maintain that throughout 60 months of a plan. Quite possibly the Debtors have addressed this difference with the Trustee, but not the court. It is through this unexplained increase in income that the Debtors basing their increase in plan payments.

The Debtors propose to increase deductions to provide for 401K contributions and expenses, and also increase plan payments to resolve these issues. See paragraph 7 of Debtors' Declaration (Dckt. 104) which runs from line 13 on page 2 to line 13 on page 3 which provides for series of deductions and expenses. This one page long paragraph presents the information in a challenging way for the court, Chapter 13 Trustee, U.S. Trustee, and creditors to understand.

To the extent that the arguments of counsel (for which there is no supporting evidence) may address the increasing-decreasing mortgage payment issue and the Debtors' declaration may identify bona fide deductions for 401K contributions and reasonable medical expenses, the Debtors leave unaddressed several key questions. The court has no confidence in what is the Debtors' actual income from employment and if they really had no income in January and February 2012. It does not appear that these debtors are actually under-median income debtors, and no evidence has been provided for why a 76 year old father (for whom no income, benefits, or support) is a "dependant." The Debtors have not demonstrated to the court how their monthly income net income has increased by $900 a month to $3,910.00 or how they compute this increased monthly net income.

The Debtor has not provided sufficient evidence to support confirmation of the proposed plan. 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.

3. 11-46706-E-13 VALERIE SMITH — MOTION TO AMEND
MET-5 Mary Ellen Terranella — 8-10-13 [72]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 10, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant relief pursuant to the motion and authorize the Chapter 13 Trustee to disburse $5,000.00 received from the sale escrow to the Debtor as the "Relocation Expense" provided by Bank of America, N.A. to the Debtor in connection with the short sale. 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 amend the Order Granting Motion to Sell Property entered March 15, 2013, regarding the real property commonly known as 1207 Whitehall Way, Vacaville, California. The Order specifies that no proceeds of the sale, including commissions, fees or other amounts, shall be paid directly or indirectly to the Debtor. Debtor seeks to amend the order deleting the first sentence of paragraph 5, and that the Chapter 13 Trustee release the $5,000.00 exempted funds to the debtor.

However, Debtor has failed to state the legal authority for the court to amend a prior order as required by Local Bankruptcy Rule 9014-1(d)(5). Instead, the Debtor merely argues that certain events occurred and then demands that the court amend the order. View in the most charitable light, the Debtor assigns to the court the responsibility for researching the law, considering the applicable appellate decisions, and then drafting the points and authorities to support the demand for relief. The court does not provide "contract legal services" for any parties, even debtors. This is cause to deny the motion. FN.1.

FN.1. Though uniform in the application of the rules and law for all parties appearing before it, the court does not blindly apply the Rules without considering whether there will be irreparable harm on a party. Federal Rule of Civil Procedure 59(e), as incorporated by Federal Rule of Bankruptcy Procedure 9023, provides that a judgment can be altered or amended, but a motion to amend a judgment must be filed no later than 28 days after the entry of the judgement. Here, the order was entered on March 15, 2013. More than 28 days after the entry of the order have passed after the entry of the order, so denying without prejudice the Motion seems to be of little moment for the Debtor or counsel.

The court's order approving the sale provides that no proceeds of the sale or any other amounts "shall be paid directly or indirectly to the Debtors." Order, Dckt. 68. It further provides that any such monies which remain after payment of lien creditors and the allowed expenses shall be disbursed to the Chapter 13 Trustee. The order does not make a determination of who is entitled to such monies and does not need to be amended. To the extent that such monies are a relocation expense paid by the lender pursuant to a program voluntarily, statutorily, or pursuant to a settlement agreement to assist borrowers, the Debtor may seek an order from the court to have such monies disbursed to the Debtor.

Though the present motion does not request such relief, under the circumstances as testified to by the Debtor the court will consider it to be a request for an order authorizing the Trustee to disburse $5,000.00 paid through the escrow by Bank of America, N.A. as a relocation expense for the Debtor voluntarily conducting a short sale rather than forcing the bank to conduct a non-judicial foreclosure sale and then an unlawful detainer action in state court.

No opposition to the "motion to amend" has been filed by the Chapter 13 Trustee or other creditors. The court accepts this as the Trustee's confirmation of the $5,000.00 relocation payment not being unreasonable in light of the facts of this case. The court concurs. As testified to by the Debtor, her dependant has medical expenses which need to be paid. Presumably, if the Debtor had received this relocation amount through escrow then she could have used it to pay the moving expenses and would of had funds to pay the medical expenses. Recovery of this expense allocation will reimburse the Debtor and provide her with funds to pay the medical expense.

Though the court is concerned when attorneys throw a problem in the court's lap, fail to provide even minimal legal authority for the relief requested. But for the medical need of the Debtor's dependant, the court would deny this motion without prejudice and require counsel to prepare a proper motion, set a noticed hearing, serve all creditors, and appear in court (no telephonic appearance permitted) to present that motion to the court. Though not requiring the presentation of such motion by counsel, the court notes that the burden for obtaining relief from the Debtor has been shifted to the court. Therefore, the court cannot identify any legal fees to which counsel would be entitled for the present motion. To the extent that counsel should believe that such fees should be allowed, the court will consider that request in light of the motion to amend, as well as how the motion to amend should be considered in light of Federal Rule of Bankruptcy Procedure 9011.

The Motion is granted and the court authorizes the Chapter 13 Trustee to disburse to the Debtor the $5,000.00 relocation expense payment from Bank of America, N.A. which was paid to the Trustee through escrow pursuant to the court's Order Granting Motion to Sell Property filed on March 15, 2013, Dckt. 68.

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 Amend filed by Debtor having been presented to the court, the court construing the "Motion to Amend" to be a motion for an order authorizing the Chapter 13 Trustee to disburse the $5,000.00 relocation expense paid by Bank of America, N.A. in connection with the court approved short sale by the Debtor, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Chapter 13 Trustee to disburse to Valerie M. Smith, the Debtor, the $5,000.00 relocation expense payment from Bank of America, N.A. which was paid to the Trustee through escrow pursuant to the court's Order Granting Motion to Sell Property filed on March 15, 2013, Dckt. 68. denied without prejudice.

4. 13-29406-E-13 EJS-1 — ABEL PEREZ AND IRMA GODINEZ — Eric John Schwab — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. — 8-22-13 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 19 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 to Value Collateral and determine creditor's secured claim 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:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3205 Bell Street Sacramento, California. The Debtor seeks to value the property at a fair market value of $90,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $94,989.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $8,294.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3205 Bell Street 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 $90,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

5. 13-29406-E-13 EJS-2 | **ABEL PEREZ AND IRMA GODINEZ**
Eric John Schwab | **MOTION TO VALUE COLLATERAL OF EQUITABLE ACCEPTANCE CORP.**
8-22-13 [23]

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 August 22, 2013. By the court's calculation, 19 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 to Value Collateral and determine creditor's secured claim to be $600.00. 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:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a Desktop Computer and assorted software programs ("ASSET"). The

Debtor seeks to value the property at a replacement value of $600.00 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 Purchase Money Security Interest in the ASSET was created on June 23, 2012, more than 1 year prior to filing of the petition, with a balance of approximately $2,259.97. 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 $600.00. *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 Equitable Acceptance secured by an asset described as a Desktop Computer and assorted software programs are determined to be a secured claim in the amount of $600.00, 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 $600.00 and is encumbered by liens securing claims which exceed the value of the asset.

6. 13-23407-E-13 MARK/JENNIFER GALISATUS MOTION TO CONFIRM PLAN
DMD-3 Daniel M. Davis 7-16-13 [68]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2013. By the court's calculation, 56 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.

Debtors have failed to meet their burden of proving the requirements of confirmation. *See Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence, typically in the form of a Debtors' Declaration proving the elements of 11 U.S.C. §1325(a), is required. *See* Local Bankr. R. 9014-1(d)(6). No declaration in support of confirmation was filed by the Debtors.

The Chapter 13 Trustee opposes confirmation offering evidence that the Debtor is $1,519.26 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Further, the Trustee objects that the Debtor's plan is not properly signed, as the name of the person signing the document shall be typed underneath the signature, pursuant to Local Bankruptcy Rule 9004-1(c). There is no signature or "/s/" signature certification as permitted under the Local Bankruptcy Rules (L.B.R. 9014-1(c)(1). This too is cause to deny confirmation.

The Trustee also offers evidence that the Plan is not Debtors' best effort. The Statement of Monthly Income (Form 22C) shows that Debtors' is above median income, with $635.00 a month of disposable income which must be paid to creditors holding unsecured claims. 11 U.S.C. § 1325(b)(1)(B). The plan proposes no less than 0%. Debtor's monthly income listed on schedule K

filed April 30, 2013 totals $2,562.00. Debtor's proposed monthly plan payments are only $2,106.42. Trustee argues that the plan payments could increase by $455.58. Since the Plan does not fully pay all claims, it must devote all of Debtors' disposable income to pay unsecured creditors. 11 U.S.C. §1325(b)(1). As Debtors' Plan fails to do so, it cannot be confirmed.

Additionally, the Trustee states the debtor's plan lists business lease of PCH Property Management in Section 3.02 of the plan and in section 2.08. Trustee states insufficient money is in the plan to make the ongoing payment of $2,200.00 and the remaining plan payments.

The Trustee also argues that Debtor cannot make the payments under the plan or comply with the plan because the Internal Revenue Service filed a claim totaling $76,128.76. The amended plan does not provide for any treatment as to the secured $23,501.94 portion.

Lastly, the Trustee states that Debtor have failed to follow the Revised Guidelines for the Preparation of Documents, Revised December 29, 2008, as the documents filed do not have consecutively numbered lines in the left margin or the total number of pages in the upper left corner of the first page. Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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.

7.	**13-28807-E-13 TSB-1**	**CHRISTOPHER/ANGELA JOHNSON Scott J. Sagaria**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-7-13 [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 August 7, 2013. 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 basis that the plan relies on a pending motion to value collateral, which was set for hearing August 27, 2013. The court having granted this motion, this portion of the Trustee's objection is overruled on this matter.

The Trustee also objects on the ground that he is unable to determine whether the Debtors can made the plan payments required under 11 U.S.C. § 1325(a)(6). Trustee states that Debtors intend to rely on their tax refunds to support their plan payment, but Debtors bank balances shown on Schedule B do not support the Debtors' ability to make the payment for the duration of this year and early portion of 2014, until the Debtors file and receive their 2013 refunds. Debtors list $20 cash and two bank accounts with $525.56 and $788.45 for a combined total of $1,334.01. The Trustee argues that the balances do not reflect any pending payments on the accounts or upcoming bills that the Debtors intend to pay post filing. FN.1.

FN.1. It appears that the only way this could financially work for the Debtors is if the purported expenses stated on Schedule J are not accurate, but overstated to allow the Debtor to pay their true expenses, the future tax refund not being necessary. It could also well be that the Debtors are intentionally having an overwithholding for taxes to improperly depress their true Monthly Net Income. Taken as true, the Debtors have so "mismanaged" their tax withholding that they are making an "interest free loan" to the federal and

state governments. For these Debtors, this annual "interest free loan" is $7,992.00 ($666 a month prorated refund x 12 months). Presumably, one of the first things knowledgeable, experienced bankruptcy counsel would do when seeing that a client is having his or her pay withheld in an improper amount would be to have that client make the necessary corrections to the withholding. Failing to do so could be a sign of several things, including that consumer counsel is not experienced counsel or that the Debtors are attempting to mislead the court and creditors. If the latter, such could have significant "good faith" consequences for the Debtors in this and subsequent cases.

It does not appear with the information provided by the Debtors that they are able to make plan payments required under 11 U.S.C. § 1325(a)(6).

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.

8. 13-29907-E-13 SS-1 — SYAMPHAI LIEMTHONGSAMOUT — Scott D. Shumaker — MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. — 8-9-13 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 32 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 to Value Collateral is granted and creditor's secured claim is determined to be $0.00. No appearance required.

Debtor seeks to value the collateral of Creditor Citimortgage, Inc. FN.1.

FN.1. It appears service is proper because the Motion and supporting pleadings were served to a designated agent for Creditor, C T Corporation System. The copies that were sent to various post office boxes for the Creditor are viewed as only informational. Debtor should note that service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously."). The court accepts these Post Office Box services as counsel sending informational copies and not believing that such mailing were the "service of process" upon which he was basing this motion.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7724 Laramore Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $163,000.00 as of the petition filing date. FN.2. 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).

FN.2. The motion states the Debtor values the property at $165,000.00. However, the Declaration, signed under penalty of perjury, states the Debtor believes that her house is worth $163,000.00. The court uses the $163,000.00 value as stated in the declaration.

The first deed of trust secures a loan with a balance of approximately $250,939.00. CitiMortgage, Inc.'s second deed of trust secures a loan with a balance of approximately $56,561.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiMortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 7724 Laramore Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $163,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

9. 13-29408-E-13 EJS-1 JOSEPH/CYNTHIA COSTANZO Eric John Schwab

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-22-13 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 19 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 to Value Collateral and determine creditor's secured claim 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:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 543 Alta Vista Ave., Roseville, California. The Debtor seeks to value the property at a fair market value of $180,000.000 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 $189,000.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $82,990.89. 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 543 Alta Vista Ave., Roseville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $180,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

10. 10-42409-E-13 GREGORY/LORI YOUNG — MOTION TO SELL
SLH-3 Seth L. Hanson — 8-22-13 [71]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 19 days' notice was provided. 21 days' notice is required.

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

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

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

However, Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2) require 21 days' notice. Here, only 19 days'

notice was provided. No motion for order shortening time was requested and no order was granted. Therefore, the motion is denied without prejudice.

If the court is presented with and grants a motion to shorten time, the alternative tentative ruling is the following:

Here, the Debtor proposes to sell the real property commonly known as 2067 Ladera Drive, Lincoln, California. FN.1. The sales price is $510,000.00 and the named buyer is Bill Martinelli. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 74.

FN.1. The court is baffled by the Debtors' attorney's inclusion of a heading entitled "Points & Authorities" in his motion. Local Bankruptcy Rule 9004-1(a) and the Revised Guidelines for Preparation of Documents ¶ (3)(a), which require that the motion, points and authorities, each declaration, and the exhibits be filed as separate electronic documents.

The Trustee filed a response stating that he does not oppose the Motion to Approve Short Sale for the subject real property.

Creditor HSBC Bank, USA, N.A., as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA2 filed a conditional non-opposition to Debtors' Motion, stating they do not oppose the sale on the condition that several conditions are included in the order. Creditor states the non-opposition is contingent on its secured claim being paid in full or in accordance with any approval as authorized by it, that it will retain its lien for the full amount due under the loan in the event that the sale does not take place, and that each party shall bear its own attorney fees and costs. However, these items are inappropriate to place in the court's order, as the Motion to Sell does not affect the Creditor's rights regarding payoff, retaining its lien at the event of non-sale, or any rights to attorney fees and costs. Therefore, the court denies Creditor's request.

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

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 Gregory and Lori Young, the Debtor ("Debtor"), is authorized to sell to Bill Martinelli or nominee ("Buyer"), the residential real property commonly known as 2067 Ladera Drive, Lincoln, California("Real Property"), pursuant to 11 U.S.C. § 363(b), on the following terms:

1. The Real Property shall be sold to Buyer for $510,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 74.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.

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

11. 13-22012-E-13 KENNETH/KRISTINE THOMPSON — CONTINUED MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso — 7-3-13 [41]

CONT. FROM 8-20-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2013. By the court's calculation, 48 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:

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the grounds that the Debtor's plan fails the Chapter 7 Liquidation analysis. The Debtors propose no less than 7.20% dividend to unsecured creditors, which totals $13,534.04, but the Debtors have failed to list the business bank account on Schedule B and exempt any equity on Schedule C. The Trustee states he raised this issue in his prior Objection to Confirmation, which was sustained on April 23, 2013.

Debtor responds, stating the account is listed on Schedule B, but no value is assigned to the balance of the account. Debtor states the account is used by the business to pay ongoing monthly expenses and is included in the value of the business. As such, Debtor argues there is nothing to exempt.

The court is not persuaded by the Debtors' arguments. First, the Debtors have carefully refrained from providing any evidence in response, instead just having their attorney present arguments in a reply for what they contend. Second, there was and is currently an actual balance in the account. The Debtors say that the value of the bank account is included in the value of the business and is not separately listed.

In reviewing Schedule B the court cannot identify any business owned by the Debtors. Schedule B, Dckt. 1 at 20-22. The Debtors do list "misc

office equipment and forklift" having a value of $5,000.00, but this is not "the business." The debtors list "computers, printers, type writers ect" having a value of $500 and "fixtures" having a value of $500, but these are not "the business." *Id.* at 22. The Debtors list having $250,000 in accounts receivable but give them a value of only $25,000 after "bad debt. The court has not been provided with any information as to how the Debtors have "worked" these receivables and whether, as part of the Debtors fiduciary duty to the estate, are taking any further action (such as assigning the accounts receivable with a collection agency, collection attorney, or other debt collection service."

In response to Question 13 on Schedule B, "Stock and interests in incorporated and unincorporated businesses. Itemize.," the Debtors state under penalty of perjury "None." Id. at 21. On the Statement of Financial Affairs the Debtors state under penalty of perjury that they had $0.00 in gross business income in 2013 year to date, 2012, and 2011. Question 2, Id. at 34. But in response to Question 18 the Debtors state under penalty of perjury that from 1988 to present they have been operating a business with the name "Thompson Sales" which is in the business "sell of goods." Id. at 37.

It appears that the bank account and the monies therein have been carefully and intentionally left off of the Schedules. This raises serious good faith questions for these Debtors in the present, and any future, bankruptcy case.

In going back over Schedule B the court notes that in response to Question 12 the Debtors state that there is an asset consisting of an "Educational Trust of Alaska" for some persons with the last name Thompson. However, on Schedule I the Debtors do not list any dependants, so these identified "beneficiaries" cannot be the Debtors' children. Schedule I, Dckt. 1 at 31. The Debtors state that this is disclosed for notice purposes only. In light of the "creative" explanation given for why the Debtors failed to and continue to not disclose to the court the balance in the business checking account, the court begins to question how and what was used to fund the "trust" and whether it is not an asset in which the estate has an interest.

The court continued the hearing to allow the Debtor to provide the Trustee with information concerning accounts which are the subject of the Trustee's objection.

The parties have not provided the court with information whether the issue concerning the accounts has been resolved.

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

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

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

12. 13-24815-E-13 HUMBERTO/NORMA AGUILAR — CONTINUED MOTION TO CONFIRM PLAN
TOG-2 Thomas O. Gillis — 6-28-13 [41]

CONT. FROM 8-13-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 46 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:

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes confirmation offering evidence that the Debtor is $503.00 delinquent in plan payments, which represents multiple months of the $301.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

CONTINUANCE

The court continued the hearing on the request of the Debtors and the Trustee to afford Debtors the opportunity to correct any misunderstanding they have concerning the plan terms and to be current on all payments by August 25, 2013.

Though 25 days have passed since the prior hearing and the court reviewing this matter for preparation of a ruling, no further pleadings have

been filed. The parties have not provided information to the court regarding the plan terms and whether the Debtor is current on plan payments.

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.

13. 12-41817-E-13 SAC-2 — TRUDY KUTZ — Scott A. CoBen — MOTION TO CONFIRM PLAN — 7-25-13 [51]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 47 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 Trustee opposes confirmation offering evidence that the Debtor is $890.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the

plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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

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

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

14. 10-51518-E-13 NERY/FLOR GUTIERREZ — MOTION TO SELL
JT-5 John A. Tosney — 8-16-13 [94]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2013. By the court's calculation, 25 days' notice was provided. 21 days' notice is required.

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

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

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

Here, the Debtor proposes to sell the real property commonly known as 8636 Raymus Street, Elk Grove, California. The sales price is $210,000.00 and the named buyers are Jing Xi Lin and Xin Zhong. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 97.

Debtors asserts there is only a first deed of trust with Wells Fargo Bank, N.A. in the amount of $288,000.00. Wells Fargo Bank, N.A. has agreed to accept less than what is owed on the property. Exhibit B, Dckt. 97.

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

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 Nery and Flor Gutierrez, the Debtors("Debtor"), is authorized to sell to Jing Xi Lin and Xin Zhong or nominee ("Buyers"), the residential real property commonly known as 8636 Raymus Street, Elk Grove, California ("Real Property"), on the following terms:
>
> 1. The Real Property shall be sold to Buyer for $210,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 97.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
>
> 5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or

indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

15. 13-23918-E-13 MICHAEL/ISABELLE KEELING MOTION TO CONFIRM PLAN
DRE-2 D. Randall Ensminger 7-18-13 [47]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 54 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 the motion on the ground that the proposed plan is not the Debtor's best effort. Trustee states Debtor is above median and has $264.16 in monthly disposable income on Form 22C, claiming $105.00 for homeowner's insurance as "special circumstance." The Trustee argues that this is part of the housing and utilities expense and Debtor's disposable income should be at least $369.16.

The Trustee also states that several expenses have been increased and it is not clear why. Further, the Trustee states that the debtor's duplicated the auto insurance, and can add an additional $210.00 to their plan payment.

Debtors' Response

Debtor filed a response, which is supported by the Debtors' declaration. The Debtors state that they have filed an amended Form 22C, stating they made a mistake on their household size. The original Form 22C stated that the Debtors' household was 3 persons. Dckt. 1 at 44. Schedule I filed at the same time is consistent, list one dependant for the Debtors, a 17 year old foster daughter.

The Debtors filed an amended Form 22C on September 3, 2013. Dckt. 67. On amended Form 22C the Debtors state under penalty of perjury that their household size is 4 persons. Amended Form 22 C, *Id.* at 2. The Debtors' declaration in response fails to identify who this fourth member of the household is and how they materialized at this late date. The reply by counsel, for which there is no evidence, is merely "In a previously filed Form 22C Debtors miscalculated their disposable income by making a mistake on their household size. The Debtors' household size is 4 people." No explanation (or testimony) is provided as to who the mysterious fourth person is. Possibly it could be a 76 year old parent the Debtors are trying to claim as a dependant, ignoring the income of that parent.

Further, while the could understand an error in counsel and his staff typing up the forms and listing only one dependant, it is a bit curious that it is the Debtors who made a "mistake on their household size." Did they miscount the numbers between one and four? Did they forget a dependant child because he or she spends a lot of time in their room? When such fundamental mistakes under penalty of perjury are made and not explained as merely a typographical error by counsel or staff (which is easily understandable), then more of an explanation is required beyond "oops, I forgot we have a son."

In addition, it appears that Debtors are still claiming homeowner's insurance (now stated at $120.00 in the declaration but included in the Statement of Current Monthly Income as $105) separate and apart from the housing and utility expense. Furthermore, Debtors have not provided sufficient testimony or evidence to substantiate the various changes in their expenses, such as the reason for why the food and medical expenses have increased and the health insurance has decreased.

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.

16. 13-23918-E-13 MICHAEL/ISABELLE KEELING — MOTION TO VALUE COLLATERAL OF RBS CITIZENS, N.A.
DRE-3 — D. Randall Ensminger — 8-12-13 [58]

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 August 12, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral 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 2126 5th Street, Lincoln, California. The Debtor seeks to value the property at a fair market value of $230,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $249,546.12. RBS Citizens, National Association, doing business as CCO Mortgage's second deed of trust secures a loan with a balance of approximately $116,500.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of RBS Citizens, National Association, doing business as CCO Mortgage secured by a second deed of trust recorded against the real property commonly known as 2126 5th Street, Lincoln, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $230,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. 12-38619-E-13 WILLIAM HARTICON **MOTION TO CONFIRM PLAN**
JLK-4 James L. Keenan **7-25-13 [74]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 47 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.

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
PO Box 7346

Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014.

The Internal Revenue Service has filed a proof of claim in the amount of $5,917.69, for which the entire amount is asserted $5,535.80 is asserted as a priority claim pursuant to 11 U.S.C. § 507(a)(8).

The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate. While counsel may want to argue, "hey, the Debtors provided for this claim so the IRS does not need to properly be served," the court will not be drawn into a "sometimes we do and sometimes we don't require parties to comply with notice rules." That will lead to the inevitable situation of a debtor completing five years of a plan and the Internal Revenue Service or Franchise Tax Board contending that the plan treatment was not proper, it still is owed a substantial amount of money, and the debtor (and possibly the debtor's counsel) left in tears after having funded a plan which could have properly paid the claim but did not because of the defective service.

TRUSTEE'S OPPOSITION

The Trustee objects on the basis that the additional provisions of Debtor's plan indicate that Debtor has a loan modification on the first deed of trust on Debtors residence and the monthly payment is $1,400.00. The Trustee states a Notice of Payment Change was filed on March 27, 2013 showing a mortgage payment of $1,691.51. Trustee states that Debtor does not appear to be willing and able to make the payment called for by the plan.

The Trustee also states that the plan may not be the Debtor's best effort as they adjusted several expenses without any explanation. The Trustee states with the change in mortgage payment should have created net income of $1,000 but the new budget shows net income of only $450.00. The Trustee notes the following expenses:

EXPENSE	3-26-13 SCHEDULE J	7-25-13 SCHEDULE J	DIFFERENCE
Mortgage	$0	$1,400.00	$1,400.00
Electricity/heating	200.00	315.00	125.00
Cable TV/internet	50.00	130.00	80.00
Home maintenance	25.00	40.00	15.00
Food	350.00	400.00	50.00
Clothing	30.00	65.00	35.00
Laundry/dry cleaning	15	25.00	10.00
transportation	125.00	295.00	170.00
recreation	25.00	65.00	40.00
haircuts, etc.	15.00	50.00	35.00
Totals	**$835.00**	**$2,785.00**	**$1,960.00**

The Trustee states he is concerned that the Debtor is manipulating the living expenses to arrive at the desired plan payment of $450.00.

The court agrees with the Trustee's concern. The Debtor has not provided any evidence of the changing expenses and miraculously comes to the same plan payment as before. This raises concerns of good faith on the part of the Debtors, which they should be prepared to address orally at the hearing. It appears that the Debtors are engaging in an outcome determinative computation of expenses and not accurately or truthfully providing testimony under penalty of perjury as to their real expenses.

The failure to provide truthful testimony under penalty of perjury raises significant good faith issues in this case and any subsequent case filed by the Debtors. It could lead to the dismissal of the current bankruptcy case with prejudice, which would then preclude the Debtors from ever discharging their current debts in any subsequent bankruptcy case. The court leaves it to creditors, the Chapter 13 Trustee, and the U.S. Trustee to determine what motions, if any, are appropriate under the circumstances.

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.

18. 13-22820-E-13 KATHLEEN SINDELAR MOTION TO INCUR DEBT
EJS-2 Eric John Schwab 8-23-13 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 23, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion Incur Debt 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 deny the Motion to Incur Debt. Oral argument may be presented by the parties at the schedules 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 seeks permission to purchase a 2008 Honda Accord EX-L, which the total purchase price is $15,597.37, with $4,000.00 down and monthly payments of $387.79 a month. Debtor's previous vehicle, after being totaled, netted insurance proceeds. Debtor plans to use the insurance proceeds as the down payment of the used vehicle and seeking leave from this court to finance the remaining amount at 15.99% interest.

The Debtor commenced this case on March 1, 2013. The proposed financing is for 58 months, which exceeds the 36 months of the plan. However, by the end of the Plan, the Debtor will be more than halfway through the loan payments. No basis has been shown for this lender extracting a 15.99% interest rate from this Debtor.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). 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). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 15.99%. Debtor has not provided sufficient evidence that this high interest rate is reasonable. Further, the Debtor has not provided the court with evidence of alternative, reliable vehicles which can be purchased for less money and for which the interest burden (even if there is an unreasonable, outrageous interest rate) will be substantially less. Using the Microsoft Excel loan calculator program, the court computes that the proposed loan, for which the principal amount is $11,597.00 would generate interest payments of $5,320.00 over the term of the loan (the court used a 60 month loan period because the program computes the payments over full year periods, not over a period of fractional years). This requires the Debtor to pay interest equal to 46% of the monies loaned. If the interest rate were reduced to a high, but somewhat rational consumer loan reasonable rate of 8%, then the interest payments would be $2,511.00 (22% of the monies loaned).

The motion is denied.

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

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

19. 12-35521-E-13 CHRISTOPHER DEAN **MOTION TO CONFIRM PLAN**
PGM-4 Peter G. Macaluso **7-24-13 [96]**

ROBERT P. ZAHRADKA, COUNSEL FOR THE OBJECTING CREDITOR SHALL APPEAR AT THE SEPTEMBER 10, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2013. By the court's calculation, 48 days' notice was provided. 42 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)(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 ----------. 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.

TRUSTEE'S OPPOSITION

The Trustee opposes the motion on the grounds that the Debtor appears to have contradictory treatment to Creditors listed in Class 1, Section 6.01 of the proposed plan and the declaration of the Debtor. Trustee states that the plan has additional provisions which calls for pre-confirmation claims for arrears to be paid within the loan modification or subject to an adversary proceeding, while the Debtor's declaration states that the plan includes ongoing mortgage payment. Trustee states the treatment is not clear for the Class 1 creditors.

CREDITOR'S OPPOSITION

Creditor San Francisco Fire Credit Union opposes the motion on the grounds that the subject real property was lawfully sold a at a foreclosure sale and a Trustee's Deed Upon Sale was recorded. As such, Creditor states that Debtor no longer has a legal interest in their collateral. Creditor states that Debtor contends that the foreclosure sale was not lawful and is in the process of having the sale rescinded.

Creditor argues that even if Debtor could rescind the sale, the amended plan cannot be confirmed because the amount of arrearage is incorrect. Creditor has filed a proof of claim stating the arrears equal $41,414.17. Creditor states that Debtor does not have a loan modification on file and has not objected to Creditor's proof of claim.

DEBTOR'S RESPONSE

Debtor responds, stating that Creditor offered, debtor accepted and debtor filed, set and served a motion to approve the loan modification on January 31, 2012, which was granted on March 5, 2012. Debtor states that Creditor alleges to have sent a letter to the debtor that denied the loan modification. Debtor states that creditor now states the property was sold a foreclosure.

With respect to the Response, the Debtor has not provided any testimony or evidence other than the reference to documents already in the court's record. However, these include the Objecting Creditor's prior opposition (filed October 2, 2012, Dckt. 15) asserting a pre-petition arrearage of $41,414.17 and the secured claim filed by the Creditor. In the opposition Creditor demanded to be paid on its secured claim.

On October 10, 2012, San Francisco Fire Credit Union filed a proof of claim in the amount of $344,537.86, which claim was asserted to be secured by the real property commonly known as 2718 Adriatic Way, Sacramento, California. Proof of Claim No. 4. The Proof of Claim assets a pre-petition arrearage of $41,414.17. This proof of claim is filed by counsel for the San Francisco Fire Credit Union, and is made under penalty of perjury.

In its Opposition filed on August 27, 2013, (for which no testimony or other properly authenticated evidence was presented to the court), San Francisco Fire Credit Union argues (contrary to its prior arguments and Proof of Claim filed under penalty of perjury) that on January 11, 2012 it actually conducted a non-judicial foreclosure sale (and the court should disregard its prior statements under penalty of perjury and subject to Federal Rule of Bankruptcy Procedure 9011 that it has a secured claim in this case). The Opposition further argues that even though a non-judicial foreclosure sale was purportedly conducted on January 11, 2012, the Trustee's Deed was not recorded until July 6, 2012, six months later. The Opposition provides no explanation why this Creditor held a Trustee's Deed for six months and did not record it.

Only after receiving the Debtor's Reply which cites the court to the contrary statements under penalty of perjury and those pleadings subject to Federal Rule of Bankruptcy Procedure 9011 asserting a secured claim does Creditor rush in a declaration to support its most recent contention. Patricia Bracey, who is an employee of Cenlar FSB, which is stated to be the servicing agent for San Francisco Fire Credit Union, states under penalty of perjury:

A. She is the custodian of books, records, files, and bankruptcy records of San Francisco Fire Credit Union as they pertain to the Debtor's loan. FN.2.

FN.2. Counsel for Movant shall address at the hearing whether Ms. Bracey's testimony is accurate when she states that she is the custodian of records for the records of San Francisco Fire Credit Union or if she is the custodian of records for Cenlar FSB. Counsel having a representative of San Francisco Fire Credit Union who is knowledge of who are its custodian of records and the relationship with its loan servicer appear at the September 10, 2013 hearing (telephonic appearance permitted) would be of assistance to the court. This would most likely avoid the court issuing an order for counsel and the representative of San Francisco Fire Credit Union being ordered to appear (no telephonic appearances permitted) before the court and explain who are the custodian of records for this Creditor and whether such responsibilities are outsourced to third-party loan servicers.

B. Cenlar FSB is responsible for servicing the Debtor's loan with this Creditor.

C. Based on her personal knowledge, Ms. Bracey states under penalty of perjury the Debtor executed a promissory note and deed of trust for the benefit of creditor. The Declaration fails to provide any basis for the court determining that Ms. Bracey having any personal knowledge of what occurred in the transaction between the Debtor and this creditor in 2005, now more than 8 years ago. FN.3.

FN.3. Counsel having Ms. Bracey appear at the September 10, 2013 hearing (telephonic appearance permitted) would be of assistance to the court. This would most likely avoid the court issuing an order for counsel and the representative of San Francisco Fire Credit Union being ordered to appear (no telephonic appearances permitted) before the court and explain who are the custodian of records for this Creditor and whether such responsibilities are outsourced to third-party loan servicers. This would most likely avoid the court issuing an order for counsel, Ms. Bracey, and a representative of San Francisco Fire Credit Union being ordered to appear (no telephonic appearances permitted) before the court and explain why the Creditor has Ms. Bracey purporting to testify based on personal knowledge and under penalty of perjury as to loans made by the Creditor in 2005.

D. The Declaration offers no testimony, and the court has no clue, why this Creditor and apparently held on to and failed to record the purported Trustee's Deed that they assert to have received from the alleged January 11, 2012 nonjudicial foreclosure sale.

Declaration, Dckt. 113.

The law firm representing Creditor appears regularly before the court and many proceedings occur without mishap. However, over the past three and one-half years the court has on more than one or two occasssions called attorneys at the law firm to account for sloppily drafted motions, such as in

the present case. This law firm appears to have a high turnover of young attorneys, with new attorneys regularly appearing before the court. In this case, the "lead attorney" listed on the banner for this contested matter was admitted to practice in June 2012. That counsel shall explain to the court at the hearing what instruction and guidance he has been given by his law firm, and by whom, as to what is proper testimony to be given in a declaration under penalty of perjury based on the witnesses personal knowledge.

In light of the prior statements under penalty of perjury and pleadings subject to Federal Rule of Bankruptcy Procedure 9011 asserting a secured claim in this case, the court has to believe that San Francisco Fire Credit Union would present the best evidence possible when it filed its Objection to confirmation. This "best evidence" consists of merely contending that a non-judicial foreclosure occurred and the Creditor sat on a Trustee's Deed for six months, keeping it a secret from the world. This court has now judicially relied upon the Proof of Claim and pleadings filed by the Creditor that is has a claim in this case and the Debtor needs to properly provide for the claim. The Proof of Claim filed by San Francisco Fire Credit Union is prima facie evidence that it is a creditor of the Debtor and not an owner of the Property. Federal Rule of Bankruptcy Procedure 3002(f).

This Creditor objects to the Plan based on it failing to properly provide for paying the $41,414.17 pre-petition arrearage. (The court having previously disposed on the contention that Creditor does not have a claim in this case.) To cure this arrearage, Creditor computes a monthly payment of $690.24 is required. The proposed plan asserts that there has been a loan modification for which there is only an $8,786.90 post-petition arrearage to cure. However, the Plan does not provide for payment of this arrearage, and appears to state that the Debtor will litigate the issue. (This is what Additional Provision ¶ 6.01 appears to say, though the language used in additional provision is unclear.)

On March 6, 2013, this court filed an order approving a loan modification between the Debtor and San Francisco Fire Credit Union. Order, Dckt. 70. The terms of the loan modification are stated in the Loan Modification Agreement filed as Exhibit A filed in support of that motion. Dckt. 53. The first page of the agreement is a letter dated December 21, 2012 on SF Fire Credit Union letterhead. It states that the loan modification is attached and requests the Debtor to sign the transmittal cover letter and Modification Agreement. The Exhibit A copies are signed by the Debtor, with the Modification Agreement having a notarized date of January 17, 2013.

In the cover letter the Debtor is requested to "please try to execute and mail" the signed cover letter and Modification Agreement to San Francisco Fire Credit Union within five days of receipt. It further states "Any delay in the return of the fully executed Modification Agreement may result in **expiration of the modification terms**." [Emphasis in original.] The Debtor has not provided the court with a fully executed copy of the Modification Agreement.

Patricia Bracey, to the extent that she would have any personal knowledge from which she could provide competent, admissible testimony, does not address what happened to the December 2012 Modification Agreement which was returned to San Francisco Fire Credit Union in January 2013. The court notes that two different attorneys appearing in this case (attorneys with the law

firm representing the Creditor in connection with the present motion) for San Francisco Fire Credit Union and San Francisco Fire Credit Union were served with the notice of hearing, motion, and supporting pleadings for the motion to approve the loan modification between the Debtor and San Francisco Fire Credit Union. Certificate of Service, Dckt. 55.

This Creditor did not file any opposition to the motion to approve the Loan Modification, assert that it had not signed the Loan Modification, or argue that there was no Loan Modification with the Debtor. Much as with the "oh by the way, we haven't told anybody and are not going to provide any competent evidence, but we own the Property," the Creditor merely sashay into court arguing (but not presenting any evidence) that "there is no Loan Modification, but we didn't tell you that earlier as well." Once again, in issuing the order and proceeding with the present motion, the court has judicially relied upon the lack of action taken by San Francisco Fire Credit Union.

Though the various objections by San Francisco Fire Credit Union appear to drop away, the court is unclear as to what the Plan provides for the post-petition arrearage payment, if any.

20. 13-29429-E-13 SDB-1 — MARK/EMILY GONZALES — W. Scott de Bie — MOTION TO VALUE COLLATERAL OF CHARLES SCHWAB BANK — 8-6-13 [23]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 35 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 to Value Collateral 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 185 Lomita Avenue, Vacaville, California. The Debtor seeks to value the property at a fair market value of $210,000.00 as of the petition filing date. As the owner, the

Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $232,569.57. Charles Schwab Bank's second deed of trust secures a loan with a balance of approximately $72,359.09 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 Charles Schwab Bank secured by a second deed of trust recorded against the real property commonly known as 185 Lomita Avenue, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $210,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

21. 13-22231-E-13 BRENT SNYDER **MOTION TO CONFIRM PLAN**
PLC-4 Peter L. Cianchetta **7-29-13 [60]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2013. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. FN.1. 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.

FN.1. The declaration of the Debtor provides the court with testimony as to facts appropriate for the court to make the necessary findings of fact and conclusions of law. The court appreciates the clear manner in which the Debtor provided this testimony.

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 July 29, 2013 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.

22. 13-22331-E-13 TSB-2 ERICH/CONNIE PARKS Al J. Patrick

CONTINUED MOTION TO DISMISS CASE
6-28-13 [59]

CONT. FROM 7-31-13

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, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

PRIOR HEARING

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 18, 2013. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Moreover, Trustee argues that Debtor failed to provide a tax transcript or copy of his/her Federal Income Tax Return for 2012. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Lastly, Trustee argues that the Debtors may not be entitled to Chapter 13 relief, because they may be over the unsecured debt limit. Trustee states that according to Schedule F, Debtors list unsecured debts totaling $101,358.26, but list three debts as "unknown" and indicate only one is disputed - the claim of Alhambra Water, Goodwin Law Corporation and Jane Does 1-9. Trustee states that five unsecured claims were filed by Jane Does for

sexual assault and malpractice in the amount of $500,000.00 each. The unsecured debt limit is $360,475.00.

DEBTOR'S RESPONSE

Debtors respond, asserting the 2012 tax returns have not been filed. Debtors state that the LLC and Corporation taxes need to be done before the 1040 individual taxes can be completed. Debtors assert that the tax liability owned to California and/or the Internal Revenue Service will be minuscule or less than zero.

Debtors argue that they are not over the allowable debt limit imposed by section 109(e), as the claims the Trustee refers to are unliquidated and not the subject of calculation or easy determination.

Lastly, Debtors assert they have filed an amended plan and set the confirmation hearing for September 10, 2013. A review of the court docket shows that a plan and motion confirming were filed on July 17, 2013.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

Trustee states there are three issues regarding the Debtors' tax returns:

A. Debtor failed to timely provide the Trustee with the last federal tax return, transcript or statement that no such document exists at least 7 days prior to the meeting of creditors.

B. Debtor provided a document to the Trustee but the Trustee is not certain that it was a full, accurate and complete federal tax return for the Debtor for 2011

C. Debtor has not filed all tax returns by the conclusion of the meeting of creditors.

The Trustee argues that the court is required to dismiss the case unless it finds that the failure to provide tax returns was due to circumstances beyond the control of the debtor. 11 U.S.C. § 521(e)(2)(B). The Trustee also argues that he is not sure that the entire 2011 return was provided as it was provided out of order and certain documents may be missing. The Trustee also states that all returns are required to be filed pursuant to 11 U.S.C. §§ 1307(e), 1308.

DEBTOR'S SUPPLEMENTAL RESPONSE

Debtors state they sent copies of the 2011 tax returns as filed to their attorney to provide the Trustee. FN.1.

FN.1. The declaration provided by Debtors states that they provide their testimony under penalty of perjury based only on "as to my individual knowledge except as to items stated upon information and belief and as to those item I believe them to be true and correct." Dckt. 100. In substance, Debtors are stating "I hope the information is true and correct, and though I don't' know,

I’m informed by someone else and believe (because it lets me win) that what I’ve said above is true and correct.”

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

Movant has failed to provide the court with competent evidence of the obligation and Movant’s interests.

Debtors also state that on July 25, 2013, they delivered their 2012 tax returns to their attorney for immediate delivery.

DISCUSSION

It appears the Debtor has addressed the Trustee’s concerns regarding filing a new plan, and explains the failure to produce 2012 tax returns because they have failed to prepare and file the required returns. However, 11 U.S.C. § 1308(a) places an affirmative obligation on Chapter 13 debtors that, if a tax

return is required, that he or she "[s]hall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition."

The trustee is authorized pursuant to 11 U.S.C. § 1308(b) to continue the First Meeting of Creditors for a reasonable period of time, not to exceed 120 days from the date for the First Meeting of Creditors to allow the debtor to file the required returns, but the additional time shall not extend beyond the latter of,

A. 120 days after the date of the First Meeting of Creditors , or

B. the last date for which the debtor is entitled for an automatic extension, if such request for an extension was timely made by the debtor.

11 U.S.C. § 1308(b)(1), (2).

The bankruptcy case was commenced by the Debtors on February 22, 2013. The First Meeting of Creditors was first set for March 28, 2013. Notice of Chapter 13 Case, Meeting of Creditors, & Deadlines; Dckt. 13. The Trustee did not continue the meeting, but concluded it. Trustee Report at 341 Meeting, March 29, 2013 Docket Entry.

The Trustee then filed an objection to confirmation of the Chapter 13 Plan, Dckt. 19, and the first motion to dismiss the case, Dckt. 23. The Motion to Dismiss includes the Debtors' failure to provide proof of Social Security number.

The Trustee filed the present Motion to Dismiss on June 28, 2013, Dckt. 59, for which the grounds include the failure to file and provide copies of the require tax returns. The Debtors admit that they have not filed their 2012 tax returns due to the fact that their limited liability company and corporate tax returns for 2012 have not yet been prepared. These limited liability company and corporate tax returns must be prepared before the Debtors can prepare their 2012 tax returns.

If the Trustee had continued the First Meeting of Creditors, it would have to have been concluded, with all tax returns provided, no later than August 15, 2013. This assumes that the Debtors made a request for an automatic extension from the April 15, 2013 tax return filing date for the 2012 return.

The Debtors filed their declaration on August 27, 2013, which states that "On July 25, 2013, we delivered our 2012 tax returns to our attorney for immediate delivery to the trustee." It also makes reference that "Once the returns were filed they were both hand delivered to the attorneys office...." Declaration, Dckt. 100. What the declaration does not clearly state is "On [specific date] we filed our personal 2012 tax returns with the Internal Revenue Service and the California Franchise Tax Board." Providing "copies" of returns to the Trustee is not the same as filing tax returns with the appropriate taxing agencies.

First Meeting of Creditors Concluded

The Trustee argues that while he could have continued the First Meeting of Creditors, apparently based on the information provided he concluded the meeting. He was without the returns when he attempted to conduct the First Meeting of Creditors. He further argues that though the Debtors could have requested that the court could order the time period for filing tax returns be extended as provided in 11 U.S.C. § 1308(b)(2). This was not done by the Debtors.

Failure to Provide Tax Returns Prior to Conclusion of First Meeting of Creditors

In discussing this Bankruptcy Code requirement that pre-petition tax returns be filed, Collier on Bankruptcy notes that either the Chapter 13 Trustee or the court may grant an extension pursuant to 11 U.S.C. § 1308(b)(1) or (2). COLLIER ON BANKRUPTCY, 16TH EDITION, ¶¶ 1308.02, 1308.03, 1308.04. Little discussion of 11 U.S.C. § 1308 and the filing of tax returns has been published by the court. However, those decisions which exist make it clear that failure to file tax returns within the statutory time limits results in the dismissal of the bankruptcy case. See *United States v. Cushing (In re Cushing)*, 401 B.R. 528, 538 (B.A.P. 1st Cir. 2009), 11 U.S.C. § 1307(e) [emphasis added], providing,

> (e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, **the court shall dismiss a case or convert a case** under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Congress has chosen to draw a bright line with respect to the filing of tax returns in a Chapter 13 case and the consequences for the failure to comply with the provisions of 11 U.S.C. § 1308. Here, the Debtors failed to timely provide the returns, and neither the court nor the Trustee granted an extension of time to file.

The court grants the motion and dismisses the case pursuant to 11 U.S.C. § 1307(e). Though dismissed, the Debtors will not suffer any irreparable harm. They may file a new case and not have this problem if the tax returns were filed in July 2013. They may seek to have the automatic stay extended pursuant to 11 U.S.C. § 362(c)(3)(B).

Computation of Chapter 13 Debt Limit

The second issue before the court is whether the Debtors can qualify as Chapter 13 debtors. Pursuant to 11 U.S.C. § 109(e), an individual with regular income that owes, on the date of the filing of the petition, “noncontingent, liquidated, unsecured debts of less than $383,175" may be a debtor under Chapter 13. The Ninth Circuit has held that a debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999). In *In re Fostvedt*, the Ninth Circuit Court of Appeals stated that the question of whether a debt is liquidated "turns on whether it is subject to 'ready determination and precision in computation of the amount due.'" 823 F.2d 305 (9th Cir. 1987)

(quoting *Sylvester v. Dow Jones and Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (B.A.P. 9th Cir. 1982)). Further, the Ninth Circuit Court of Appeals in *In re Wenberg* affirmed the reasoning in the Bankruptcy Appellate Panel opinion: "The definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *In re Wenberg*, 94 B.R. 631 (B.A.P. 9th Cir. 1988).

Here, the five (5) unsecured claims filed by Jane Does 1-5 for sexual assault and malpractice in the amount of $500,000.00 each appear to be pending in state court, with no judgment to date. None of the creditors have sought relief from the automatic stay to prosecute that state court litigation.

These amounts do not appear to be readily determinable or precise in the amount due. These claims would require more than a “simple hearing” to determine liability and amount of the debt owed, if any. Therefore, the unsecured claims filed by Jane Does 1-5 would not be included in the 11 U.S.C. § 109(e) determination, as they were unliquidated on the date of filing.

The court grants the Motion and orders the Chapter 13 case dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

23. 10-37434-E-13 PGM-3 — THEODORE/TAMERA SANDOVAL — Peter G. Macaluso — MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY(S), FEE: $1,500.00, EXPENSES: $0.00 — 8-7-13 [69]

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 August 8, 2013. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Compensation is granted. No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of $1,500.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Motion to Modify to add 11 U.S.C. § 1305 claim. Counsel suggests this was unanticipated, as Debtor requested that the taxes be added to the plan; and

2. Motion to Approve Loan Modification. Counsel suggests this was unanticipated as clients obtained a loan modification with their lender which required court approval.

The hourly rates for the fees billed in this case are $200.00/hour for counsel for 7.5 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $1,500.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Law Offices of Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Peter G. Macaluso, Counsel for Debtor Applicant's Fees Allowed in the amount of $ 1,500.00.

24. 13-26134-E-13 CHARLES/TOMMI BOWLDEN — MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso — 7-26-13 [38]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 26, 2013 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.

25. 10-40435-E-13 TOMAS SANCHEZ AND MAURA GOMEZ
Stanley Phan

MOTION TO APPROVE LOAN MODIFICATION
8-8-13 [31]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

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

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

Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $847.91. The modification will capitalize the pre-petition arrears and provides for an interest rate of 5.000% over the next 36 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Tomas Sanchez and Maura Bravo Gomez, Debtors, are authorized to amend the terms of their loan with Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., which is secured by the real property commonly known as 2012 Marin St., Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 34, in support of the Motion.

**26. 12-26436-E-13 CAH-2 | RABINDER SANDHU
C. Anthony Hughes | MOTION TO MODIFY PLAN
7-24-13 [37]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. 10-46537-E-13 DANIEL/REBECCA BREEN — CONTINUED MOTION TO MODIFY PLAN
PGM-6 Peter G. Macaluso — 7-12-13 [101]

CONT. FROM 8-20-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2013. By the court's calculation, 39 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:

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the grounds that under the terms of the proposed plan, the Debtors have paid ahead $62,965.00 under the proposed plan.

Furthermore, according to the Trustee's calculations, the plan will complete in 66 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Debtors respond, stating that an error occurred and the plan should read "69,9953.00 through 7/13, then $3,015 x 28, starting 8/13." Debtor argues that this will make the plan feasible.

The court continued the hearing to allow Debtor to review the Trustee's calculation of payments and determine what amendments are necessary to meet the 60 months maximum for a plan.

The parties have not provided any response on the proper computation of the plan term as of the court's September 8, 2013 review of this matter for the calendar. update to the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 is denied without prejudice.

28. 13-22637-E-13 DARREN/EMILY DIVER — MOTION TO CONFIRM PLAN
MOH-2 Michael O'Dowd Hays — 7-16-13 [45]

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

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

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

A Motion to Confirm having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to confirm is dismissed without prejudice.

29. 09-42238-E-13 ROBERT/AMITY JONES — MOTION TO SELL
JT-2 John A. Tosney — 8-14-13 [33]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 27 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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

Here, the Debtor proposes to sell the real property commonly known as 1848 Augusta Lane, Yuba City, California. The sales price is $151,000.00 and

the named buyer is Melissa Sorensen. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 36.

The Property is subject to a deed of trust securing a claim in the amount of $215,200.00 owed to M&T Bank. In addition, a claim for Bank of America, N.A. (referenced as BAC Home Loan Servicing, which was merged into Bank of American, N.A. in the summer of 2011) in the amount of $52,676.00 which is secured by a junior deed of trust.

The Trustee filed a statement of non-opposition on August 16, 2013.

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

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 Robert and Amity Jones, the Debtor ("Debtor"), is authorized to sell to Melissa Sorensen or nominee ("Buyer"), the residential real property commonly known as 1848 Augusta Lane, Yuba City, California("Real Property"), pursuant to 11 U.S.C. § 363(b), on the following terms:
>
> 1. The Real Property shall be sold to Buyer for $151,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 36.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.

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

30. 11-40638-E-13 HAROLD/JANICE MCELHONE MOTION TO MODIFY PLAN
JT-1 John A. Tosney 7-29-13 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2013. By the court's calculation, 43 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 July 29, 2013 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.

31. 13-27845-E-13 WMR-2 TIMOTHY/MICHELLE ROSEN William M. Rubendall AMENDED MOTION TO VALUE COLLATERAL OF STERLING JEWELERS 8-7-13 [37]

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 August 7, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be $1000.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a men's and women's rings and women's necklaces. The Debtor seeks to value the property at a replacement value of $1,000 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 Retail Installment Credit Agreement which was created on January 28, 2011 gave Sterling Jewelers Inc. dba Kay Jewelers, the creditor, interest in the men's and women's rings and women's necklaces purchased in January and

February 2012. The purchase was made more than 1 year prior to filing of the petition, with a balance of approximately $10,726.48. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $1,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by 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 Sterling Jewelers Inc. dba Kay Jewelers secured by an asset described as men's and women's rings and women's necklaces is determined to be a secured claim in the amount of $1,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $1,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

32. 13-30347-E-13 ELMA VIRTUCIO — **MOTION TO VALUE COLLATERAL AND AVOID LIEN OF BANK OF AMERICA, N.A.**
BMV-1 Bert M. Vega — **8-9-13 [16]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 8, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to deny the Motion to Value Collateral without prejudice. No appearance at the September 10, 2013 hearing is required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2025 Beryl Court, Vallejo, California. The Debtor seeks to value the property at a fair market value of $319,204.00 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).

However, the declaration offered by the Debtor is not executed under penalty of perjury.

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

Counsel is advised to conform declarations offered to the court to meet this basic legal requirement.

Further, the Debtor does not provide testimony as to his opinion as to value, but merely says that Zillow.com states a value on the internet and then

asks the court to accept the statements of Zillow as evidence in this case.

Merely because a person can find a statement on the internet does not render it credible or exempt it from the normal rules of hearsay. This court is not alone in its view of hearsay statements procured from the internet,

> The web postings were not statements made by declarants testifying at trial, and they were being offered to prove the truth of the matter asserted. That means they were hearsay. Fed. R. Evid. 801. Jackson tries to fit the web postings in as a hearsay exception under Federal Rule of Evidence 803(6) as business records of the supremacy groups' Internet service providers. Internet service providers, however, are merely conduits. The Internet service providers did not themselves post what was on Storm Front and the Euro-American Student Union's web sites. Jackson presented no evidence that the Internet service providers even monitored the contents of those web sites. The fact that the Internet service providers may be able to retrieve information that its customers posted or email that its customers sent does not turn that material into a business record of the Internet service provider. "Any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretations of the hearsay exception rules." *St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 F. Supp. 2d 773, 775 (S.D. Texas 1999).

United States v. Jackson, 208 F.3d 633, 637 (7th Cir. 2000), cited in *Adams v. Albertson*, 2012 U.S. Dist. LEXIS 50904 (ND Cal 2012). The Third Circuit Court of Appeals similarly enforced the basic rules of evidence with respect to an alleged web site of one of the parties.

> Of particular concern is that the District Court used the website at http://www.victaulic.com to establish certain facts about Victaulic's business. While it is proper for a court to take judicial notice of facts not reasonably subject to dispute, FED. R. EVID. 201(b), several concerns come into play here. First, we require that evidence be authenticated before it can be admitted. *Id.* 901(a). Thus we allow judicial notice only from sources not reasonably subject to dispute. *Id.* 201(b). Anyone may purchase an internet address, and so, without proceeding to discovery or some other means of authentication, it is premature to assume that a webpage is owned by a company merely because its trade name appears in the uniform resource locator. Cf. *United States v. Jackson*, 208 F.3d 633, 638 (7th Cir. 2000) (holding that information from the internet must be properly authenticated to be admitted); *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782-83 (C.D. Cal. 2004) ("Printouts from a web site do not bear the indicia of reliability demanded for other self-authenticating documents under FED. R. EVID. 902. To be authenticated, some statement or affidavit from someone with knowledge is required . . . .").

Vitaulic Co. v. Tieman, 499 F.3d 227, 236 (3rd Cir. 2007). *See Turkish Coalition of Am., Inc. v. Bruininks*, 678 F.3d 617 626 (8th Cir. 2012) (web sites in general not ordinarily viewed as scholarly works); *United States v.*

El-Mezain, 664 F.33d 467, 496 (5th Cir. 2011) (newspapers, leaflets, internet, and friends are classic hearsay).

Meritless Relief Requested

In this Motion the Debtors request that the court value Bank of America, N.A.'s claim secured by a second mortgage, and also to avoid the lien created by the second mortgage. Federal Rule of Civil Procedure 18 allows for a plaintiff to join multiple claims against a defendant in one complaint. Federal Rule of Bankruptcy Procedure 7018 makes Rule 18 applicable in adversary proceedings. However, the Federal Rule of Bankruptcy Procedure does not make Rule 7018 applicable in contested matters, which includes motions. The Debtors have improperly attempted to join a motion to value a secured claim pursuant to 11 U.S.C. § 506(a) with a motion to avoid a lien pursuant to 11 U.S.C. § 522(f). This is improper. The Supreme Court and Rules Committee excluded the provision of Rule 7018/Rule 18 from the rapid law and motion practice in the bankruptcy court. Each motion must assert one claim against the other party.

Additionally, the request that the court "avoid the lien" pursuant to 11 U.S.C. § 506(a) appears to be without merit. That provision of the Bankruptcy Code merely provides for determining the value of a secured claim and does not empower the court to avoid liens.

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

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

33. 13-29251-E-13 DAMION BOATMAN **MOTION TO VALUE COLLATERAL OF**
SS-1 Scott D. Shumaker **J.P. MORGAN CHASE BANK, N.A.**
8-9-13 [18]

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 August 9, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2004 Land Rover, Range Roover HSE. The Debtor seeks to value the property at a replacement value of $10,250.00 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).

However, Debtor has not established that underlying debt is not a purchase-money loan acquired within the 910-day period prior to the filing of the petition. If so, Debtor is statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a)(*). The Debtor has not stated the prima facie case for the requested relief. *See* Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

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

34. 10-45652-E-13 MARIO/RAFAELA GONZALEZ — MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso — 8-6-13 [135]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 35 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 continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on September 17, 2013. 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 Trustee opposes the motion on the basis that he is unsure of Debtors' current statement of income, Dckt. 138 filed August 6, 2013, is accurate. The debtor's income has not changed or the ages of the dependents. The only change to the current statement of income is that second debtor is listed as unemployed for one month. The Trustee argues that the Debtor does not explain if the debtor has applied or is eligible for unemployment benefit or provide current paystubs to support the income reported.

Debtors respond, stating they are sending paystubs to the Trustee for review, as the co-debtor has been unemployed for about two months without unemployment being awarded. Debtors state that if and when this status changes, they will immediately notice the Trustee. Debtor contends that the children's ages should have been updated.

The court continues the motion to allow the Trustee to review the recently submitted documentation.

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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on September 17, 2013.

35. 13-28454-E-13 NLE-1 | **TERESA BURNS** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-15-13 [26]**

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on August 15, 2013. By the court's calculation, 26 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 General Order 05-03, Paragraph 3(c). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on September 3, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

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

36. 13-24756-E-13 JEFFREY/TINA SOOTER
RPH-4 Robert P. Huckaby

OBJECTION TO CLAIM OF VIRGINIA DEPARTMENT OF TAXATION, CLAIM NUMBER 15
7-26-13 [69]

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 July 26, 2013. By the court's calculation, 46 days' notice was provided. 44 days' notice is required.

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

The court's tentative decision is to overrule the Objection to Proof of Claim number 15 of Virginia Department of Taxation. 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 15 on the court's official claims registry, asserts $12,853.76 claim for income tax for the tax years 1999, 2003, 2004, 2008 and 2009. The Debtor objects to the Proof of Claim on the basis that he moved out of the State of Virginia in 2000 and has not lived, worked, or had any income in Virginia since then. Debtor does not object to the $150.00 unsecured claim for the 1999 tax year.

However, the court is concerned with the service provided to Virginia Department of Taxation. While the address served was the address provided on the Proof of Claim, a search on the Virginia Department of Taxation website shows the "Mailing Address" as:

Virginia Department of Taxation
Office of Customer Services
PO BOX 1115
Richmond, VA 23218-1115

Here, Debtor served the motion and supporting pleadings at:

Virginia Department of Taxation
PO Box 2156
Richmond, VA 23218

The court will not issue orders when the respondent creditor has not been served at a verifiable address. Additional, service upon a post office

box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.*), 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Additionally, the Debtor fails to provide the court with the proper service required under Virginia law for a governmental department.

Furthermore, 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).

Debtor has provided his testimony that he did not receive income from the State of Virginia or owe any tax to them after the 2000 tax year. The Debtor states he was informed and therefore believes that his Navy pension is only taxable to Virginia when he lived there. Dckt. 71. The supporting documents on the prima facie valid proof of claim states that the "tax type" is "individual income." However, the proof of income does not state what is included in individual income. Debtor has not met his burden of presenting a factual basis to overcome the validity of the proof of claim. Hearsay testimony is not of equal probative force to that presented with the proof of claim.

It appears that something is going on here between the Debtors and the State of Virginia. The Debtors do not testify as to in what state they have paid their income tax. While filing a Proof of Claim, which is prima facie evidence of the obligation, the State of Virginia does not provide any documentation as to why or how it is asserting the right to income taxes for that year. Having filed a Proof of Claim, it appear that the Debtors can easily conduct written discovery by interrogatories, request for admissions, and document production (which production could be done by mail to counsel for the Debtors for the convenience of all parties). The Debtors can then have the evidence, or lack of evidence, as to why a proof of claim has been filed. If no bona fide basis exists for the proof of claim, then the Debtors can seek to recover the appropriate damages and seek such other relief as warranted.

Based on the evidence before the court, the creditor's claim is fully allowed. 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 Virginia Department of Taxation 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 15 of Virginia Department of Taxation is overruled.

37. 08-36359-E-13 JEFF/LAURA KOEHN — MOTION TO APPROVE LOAN MODIFICATION
BLG-1 Chad M. Johnson — 8-13-13 [62]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

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

Resurgent Mortgage Servicing, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $803.83. The modification will capitalize the pre-petition arrears and provides interest rate for 4.00% over the next 40 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Jeff Koehn and Laura Koehn, debtors, are authorized to amend the terms of their loan with Resurgent Mortgage Servicing, which is secured by the real property commonly known as 1921 Birmingham Ave, West Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 65, in support of the Motion.

38. 11-33759-E-13 ANTHONY/DAWN BASURTO — MOTION TO APPROVE LOAN MODIFICATION
PGM-5 Peter G. Macaluso — 8-1-13 [94]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

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

Creditor Carrington Mortgage Services, LLC, whose claim the plan provides for in Class 4, has agreed to a trial loan modification requiring a monthly mortgage payment of $2057.00 from August 1, 2013 through December 2013 paid directly to Creditor. During this period, the Debtor will not be required to make a payment of $3,620.00 to the Trustee as required by the First Modified Chapter 13 Plan. Dckt. 38. Instead, the Debtor will make a payment of $1,563.00 to the Trustee through December 2013. In January 2014, the Debtor will resume payments in full for the amount of $4,270.00 to the Trustee under the existing confirmed plan unless the Court orders otherwise. FN.1.

FN.1. If a permanent loan modification is granted and the Trustee and the Debtor concur on the amount of modified payment, they can file an *ex parte* motion to reduce the plan payment by the lower direct payment being made by the Debtors. However, a noticed hearing would clearly be required to make other changes, if any, to the Chapter 13 Plan or amount of plan payment.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Anthony G Basurto and Dawn A Basurto, Debtors, are authorized to amend the terms of their loan with Carrington Mortgage Services, LLC, which is secured by the real property commonly known as 2954 Great Egret Way, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit “A,” Docket Entry No.97, in support of the Motion.

39. 08-34960-E-13 THELMA/EDWARD RHEA — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
TSB-1 Peter G. Macaluso — 8-5-13 [174]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 5, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. 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 Trustee objects to Debtor's claim of exemption of "life insurance with wife's employer upon death of Edward Rhea, Met Life Acct #xxxx4903, issued 1/2013" in the amount of $50,063.01 fully exempt under California Code of Civil Procedure § 703.140(b)(11)(c) and 703.140(b)(5).

The Trustee argues that the debtor has not shown how the funds from the insurance proceeds are reasonable and necessary for the support of Debtor or any dependent of Debtor in support of the exemption. Trustee argues that Debtor failed to explain the disposition of the proceeds of the insurance policy and has not stated if any of the insurance proceeds remain.

Debtor's Response

Debtor responds, in the form of arguments by Debtor's counsel and fails to provide the court with any testimony in connection with this Claim of Exemption. Rather, the Debtor merely directs the court to consider her declaration in support of a motion to confirm a modified plan (providing a copy of the declaration as an exhibit for the convenience of the court and parties in interest).

The Response, including any legal authorities, which the Debtor offers consists of "Debtor responds and states that the proceeds are both reasonable and necessary as evidenced by the Declaration of Debtor marked as Exhibit A." Dckt. 179. This Response says little more than, "Judge, the Debtor hires you to research the law, review the evidence, glean the relevant evidence, construct the arguments, advocate for the Debtor, and

then grant the relief as you advocated for the Debtor in this Contested Matter." The court declines the invitation to advocate for the Debtor. (Given the judge's mandatory inactive judicial appointment status with the California State Bar, the judge cannot take on the role of representing a party in a contested matter even if it was not against judicial canons.)

Debtor's September 6, 2013 Response

In her Supplemental Declaration filed on September 6, 2013, Dckt. 184, the Debtor states that she is 58 years old and plans to retire in 4 years at age 62. Based on the longevity of her parents, the Debtor anticipates living into her mid-80's. She is currently working as a RN Team Manager at Kaiser Hospital. As suspected, the Debtor's 401K has grown to $150,000.00 from the $90,000 in 2008. When she retires the Debtor "plans" on receiving $2,000.00 a month and an additional $1,000.00 a month. The Debtor does not state how she computes the $2,000.00 a month and what options she has which may increase or decrease that amount.

The Debtor also makes no reference to the use of the $150,000.00 through her retirement – the purpose for which it was saved. Using the Microsoft Excel annuity calculator, with only a 3% annual return the $150,000.00 can provide the Debtor with an additional $750.00 a month into her late 80's.

The Debtor states that when she retires will still have her $3,079.16 monthly mortgage expense (as stated in the Plan) for an unstated period of time. The Loan Modification Agreement provides for a principal balance of $528,199.28, with only a $2,503.39 monthly mortgage payment for 292 months (24 years) from October 2012. It further provides that a principal balance of $328,667.73, with must be repaid in 188 months (15 years). Based on the financial information provided by the Debtor, it appears that she will need to sell the house when the balloon payment comes due or soon, likely riding the projected increase in real property values to realize a gain from the sale.

The Debtor, notwithstanding her life expectance projection into her mid-80's, also asks the court to consider that she suffers from kidney disease and has a family history of heart disease. She testifies that she suffers from high cholesterol, "which increases my risk of ongoing cardiovascular illness." Such testimony may well indicate that the Debtor's need for any amounts in excess of her $150,000.00 401K, Social Security Payments, and retirement plan may be shorter than projected.

DISCUSSION

The testimony of the Debtor as set forth in the Declaration provided as Exhibit A, Dckt. 180, is,

A. I received $50,000.00 of life insurance proceeds.

B. The Debtor used $11,000.00 to pay post-petition 2012 and 2013 taxes having used the income she earned for other, unstated purposes. The Debtor states that she intentionally increased her deductions to decrease the amount of withholding. There is no showing that the insurance proceeds are reasonable and

necessary for the support of Debtor or any dependent of Debtor to pay this expense for which the Debtor had the monies to pay.

C. The Debtor did not need $10,000.00 of the insurance proceedings and they were not reasonable and necessary for the support of Debtor or any dependent of Debtor, electing to give $5,000.00 gifts to each of her two children.

D. The Debtor did not need $2,000.00 of the insurance proceeds as reasonable and necessary for the support of Debtor or any dependent of Debtor, which she used to pay for a trip "back home" to deal with unidentified "family issues."

E. The Debtor did not need $1,000.00 of the insurance proceeds as reasonable and necessary for the support of Debtor or any dependent of Debtor money, which she used to replace the carpet in her home.

F. The Debtor used $2,000.00 of the insurance proceeds to make repairs to one of her three vehicles – either the 1992 Buick, the 1998 Ford Mustang, or the 2006 BMW 530i.

G. The Debtor does not state why the balance of $19,953.35 is reasonable and necessary for the support of Debtor or any dependent of Debtor, but just testifies that it is "available in a total care account with MetLife.

This Debtor currently has gross monthly income of $11,934.34 a month. Declaration in Support of Confirmation and Exhibit 2, Dckts. 163, 164. From this she has $3,010.06 the Debtor has withholding for taxes and Social Security. The court has no idea if this is a correct amount. The Debtor then deducts another $352.76 for a 401K contribution.

For her current expenses, the Debtor lists $2,744.94 on Exhibit 3 filed in support of the motion to confirm the modified plan. Dckt. 164. This does not include her mortgage expense, which is $3,079.16 a month (the court uses the higher amount out of an abundance of caution). Proposed Modified Plan, Dckt. 165. Adding the mortgage expense to the others stated under penalty of perjury by the Debtor, here total expenses are $5,825.00 a month. Even accepting the deductions as set forth on Exhibit 2, Dckt. 164, the stated monthly net income of $8,385.00 generates a surplus monthly cash flow of $2,559.00 a month.

The Debtor has admitted that she spent a portion of the insurance proceeds for expenses which were not reasonable and necessary for her support or support of a dependant. For other, the Debtor offers no testimony as to why the expenses were reasonable and necessary for support. As further shown, this Debtor enjoys a substantial surplus cash flow (even while maintaining a monthly mortgage payment in excess of $3,000) of $30,708.00 a year.

Compounding the Debtor's problems and undercutting her credibility are that,

A. She owns three vehicles for one person.

B. She has a 401K with a balance of $90,000.00 in 2008 when this case was filed. (The Debtor has not provided updated financial information as to current value of this account. Given the market crash in 2007/2008 and the substantial rise in the stock market in the past five years, it is likely that the value of this account has risen substantially.)

C. She has a retirement plan with her employer, but does not provide information as to whether it is a defined benefit plan and what benefits are available to her under it. The Debtor's employer is Kaiser hospital for whom she has worked for now more than 25 years.

Schedule B, Dckt. 1 at 32.

The Debtor has demonstrated that the $50,000.00 in not necessary and reasonable for the support of the Debtor or dependant of the Debtor. This Debtor earns well over the median income, has a substantial 401K investment, and has a retirement plan (in addition to her Social Security). While the death of a spouse is heart wrenching, it is not an excuse to steal $50,000.00 from the estate.

Finally, the Debtor would contend that since she wants to have a home with more than a $500,000.00 mortgage then taking the $50,000.00 from the estate is "necessary and reasonable." That is a false assertion. If having a home with more than a $500,000.00 is what the Debtor wants, she had use her discretionary money to provide for it.

The Trustee's Objection to Claim of Exemption is sustained and the Chapter 13 Debtor, as the fiduciary of the bankruptcy estate, is ordered to turn over $50,000.00, which represents the $50,000.00 of the estate's interest in the life insurance proceeds, to the Chapter 13 Trustee on or before October 15, 2013, for safe keeping pending further order of the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and Debtor's exemption in "life insurance with wife's employer upon death of Edward Rhea, Met Life Acct #xxxx4903, issued 1/2013" in the amount of $50,063.01 is disallowed.
>
> **IT IS FURTHER ORDERED** that the Debtor, as the fiduciary to the bankruptcy estate, shall turn over $50,000.00 to the Chapter 13 Trustee on or before October 15, 2013. The $50,000.00, from whatever source, shall represent the

$50,000.00 of the life insurance proceeds which are property of the estate which the Debtor received in her capacity as the fiduciary of the estate. It is necessary and proper for the court to order the $50,000.00 to be turned over to the Chapter 13 Trustee for safekeeping pending further order of the court.

40. 13-27260-E-13 DIANA REAGAN
Kristen Bargmeyer

MOTION TO VALUE COLLATERAL AND AVOID LIEN OF WELLS FARGO, N.A.
7-30-13 [19]

APPEARANCE OF KRISTEN BARGMEYER COUNSEL FOR THE DEBTOR REQUIRED FOR THE SEPTEMBER 10, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

Tentative Ruling: The Motion to Value Collateral was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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

Failure to Properly Notice Motion

The moving party is reminded that the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. *See* Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper. Failure to comply with the local rules is grounds to deny the motion. *See* Local Bankr. R. 9014-1(l).

Requesting Meritless Relief

In the Motion the Debtor asks the court to value the creditor's claim and avoid the lien. The Debtor bases this "avoiding" of the lien on 11 U.S.C. § 506(a). However, that section merely allows the court to value a secured claim not avoid a lien. The Debtor makes reference to 11 U.S.C. § 506(d), but no cases providing that merely valuing a secured claim allows the lien to be avoided pursuant to 11 U.S.C. § 506(d). Most likely the reason for not citing any authority is that such would be contrary to the express holding by the United States Supreme Court in *Dewsnup v. Timm*, 502 U.S. 410, 416 (1992). FN.1.

FN.1. Counsel may want to read this court's understanding of the law with respect to "lien stripping" in reorganizations. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case), *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013).

Furthermore, in this Motion the Debtors request that the court value Wells Fargo, N.A Successors in Interest to World Savings Bank FSB, claim secured by a second mortgage on 470 Seahorse Drive, Vallejo, California, and also to avoid the lien created by the second mortgage. Federal Rule of Civil Procedure 18 allows for a plaintiff to join multiple claims against a defendant in one complaint. Federal Rule of Bankruptcy Procedure 7018 makes Rule 18 applicable in adversary proceedings. However, the Federal Rule of Bankruptcy Procedure does not make Rule 7018 applicable in contested matters, which includes motions. The Debtors have improperly attempted to join a motion to value a secured claim pursuant to 11 U.S.C. § 506(a) with a motion to avoid a lien pursuant to 11 U.S.C. § 522(f). This is improper. The Supreme Court and Rules Committee excluded the provision of Rule 7018/Rule 18 from the rapid law and motion practice in the bankruptcy court. Each motion must assert one claim against the other party.

Failure to Comply with Pleading Rules

The Motion must state with particularity the grounds for relief pursuant to Federal Rule of Bankruptcy Procedure 9013. The present Motion combines the motion with the points and authorities. This is not the practice in the Bankruptcy Courts in the Eastern District of California. "Motions, notices, objections, responses, relies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by the Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion, Local Bankr. R. 1001-1(g), 9014-1(1).

In addition to curtailing the practice some attorney had of hiding the grounds (or lack of grounds) for a motion in a convoluted points and authorities, the Rule exists to provide the court with a workable set of electronic documents. Rather than the court having an unuseable 120 page electronic motion-points and authorities-declarations-exhibits document, the court has manageable electronic documents. Working in a near paperless environment the court can have the draft ruling open on one screen and then the

motion, declaration, and exhibits each opened in separate tiles on a second screen. This allows the court to reasonably navigate the multiple documents which cross reference each other than trying to electronically "thumb-through" a massive electronic document.

Though counsel may argue that the "points and authorities" are simple so the court should let is slide is an invalid argument. The court will not be drawn into selectively enforcing the rules so that attorneys and pro se debtors are left to guess when the rules will be reasonably enforced and when they will snap on the attorney or pro se.

Improper Relief Requested

The Debtor requests a declaration and determination that the Creditor's lien is or will be void. A request to determine the extent, validity, or priority of a security interest, or a request to avoid a lien, requires adversary proceeding. Fed. R. Bankr. P. 7001(2). The court cannot determine the extent, validity, or priority of the creditor's security interest through a motion. This portion of the requested relief is denied. If the creditor refuses to reconvey the security interest once the underling obligation has been satisfied, then the Debtor may bring an appropriate action.

The Motion is denied without prejudice.
The court shall issue a minute order substantially in the following form holding that:

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

41. 13-27260-E-13 DIANA REAGAN **MOTION TO VALUE COLLATERAL OF**
KMB-1 Kristen Bargmeyer **WELLS FARGO, N.A.**
8-10-13 [37]

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 August 10, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to continue the hearing on the Motion to Value Collateral to ----- x.m. on ----------, 2013. Creditor shall file and serve supplemental opposition pleadings, including Proof of Claim and evidence of value, on or before [Date], 2013, and Debtor shall file and serve supplemental pleadings and evidence of value on or before [Date], 2013. 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 conclusion of law:

Debtor seeks to value the collateral of Wells Fargo Bank, N.A. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 470 Seahorse Dr., Vallejo, California. The Debtor seeks to value the property at a fair market value of $245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). It is asserted that the $37,038.00 claim of Wells Fargo Bank, N.A. is secured by a second deed of trust.

It is asserted that Wells Fargo Bank, N.A. has a claim in the amount of $282,258.00 which is secured by a senior deed of trust. Therefore, it is alleged that there is no value in the collateral to secure the claim of Wells Fargo Bank, N.A. secured by a second deed of trust.

Creditor's Opposition

Wells Fargo Bank, N.A. opposes Debtor's valuation of the subject property. Creditor intends to file its Proof of Claim and obtain an appraisal or other expert valuation of the subject property. Creditor seeks additional time to procure an appraisal.

However, Creditor has not filed an evidence in support of opposition. No proof of claim has been filed to date, but the Debtor confirms that Wells

Fargo Bank, N.A. is asserting a claim which it contends is secured by the Property.

The hearing is continued to allow Wells Fargo Bank, N.A. to obtain an appraisal or other valuation evidence and share that evidence with counsel for the Debtor.

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 the Motion is continued to ------ x.m. ----------, 2013.

42. 10-49461-E-13 YVONNE JOYCE **CONTINUED MOTION TO MODIFY PLAN**
DPC-1 Julius M. Engel **7-12-13 [128]**

CONT. FROM 8-13-13

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

Correct Notice Not Provided. No proof of service has been filed for the court to determine if notice and service are proper.

Tentative Ruling: The Motion to Confirm the Plan has not 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:

PRIOR HEARING

Debtor Yvonne Annette Joyce filed a response to the Trustee's Notice of Default and Application to Dismiss on July 12, 2013. In this response, Debtor disputes the amount owed and seeks a modified payment due to $400.00 in lost wages. Dckt. 128. No amended plan has been filed or served to date. FN.1.

FN.1. Though the Debtor is represented by counsel, his response to the Notice of Default has been filed in *pro se.*

The Trustee opposes confirmation offering evidence that the Debtor is $1,340.00 delinquent in plan payments under the confirmed plan, which represents multiple months of the $450.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also notes that Debtor has not filed the proper documents in support of plan modification after confirmation pursuant to Local Bankruptcy Rule 3015-1(d)(2). Debtor has not filed a modified plan or proof of service. The Trustee has no way of knowing the actual plan payment proposed, the treatment of creditors, or the percentage to unsecured creditors. The Trustee states that the document filed by Debtor does not comply with Federal Rule of Bankruptcy Procedure 9013 as it fails to state with particularly the grounds upon which relief is based.

Debtor has also failed to file updated income and expense statements in support of a reduction in wages and a reduction in the plan payment. Debtor's Schedule I shows income of a pension or retirement income of $314.00 and a monthly contribution from Andrew Ivey of $1,462.00. It is unclear where the reduction of income applies.

Further, Debtor has failed to meet their burden of proving the requirements of confirmation. *See Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence, typically in the form of a Debtors' Declaration proving the elements of 11 U.S.C. §1325(a), is required. *See* Local Bankr. R. 9014-1(d)(6).

The Trustee also states that the Debtor's plan may no longer be feasible, as the Trustee calculates the plan will complete in more than the 60 months proposed, possibly taking up to 81 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The reduction in plan payment would also be insufficient to pay the $773.24 monthly dividend of Debtor's Class 2 creditor, Guild Mortgage company.

Lastly, the Debtor has filed the motion without the aid of an attorney. However, a review of the docket shows that Debtor is represented in the bankruptcy case by Julius M. Engel. No Substitution of Attorney of Withdrawal has been filed to date. The court is not clear why Debtor is attempting this modification without counsel.

CONTINUANCE

The court continued the hearing. No supplemental documentation has been filed to date.

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

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

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

43. 09-42762-E-13 WALTER WHITNACK AND NATALIE HARTMAN WHITNACK — CONTINUED MOTION TO SUBSTITUTE PARTY
PGM-2 Peter G. Macaluso — 6-10-13 [74]

CONT. FROM 8-6-13, 7-16-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 10, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

PRIOR HEARING

Debtor, Natalie Hartman-Whitnack, moves the court for an Order for determination and for further administration of this Chapter 13 case is in the best interest of the parties, after the death of co-debtor Walter A. Whitnack. Debtor states that she was the beneficiary to their life insurance policy and the money received was used for funeral and burial expenses. The Debtors have authorized the payment by the Trustee of $24,068.00 under the confirmed plan and while there has been a slight decrease in income, Debtor is still receiving pension funds and a decease in expenses, which should allow her to continue the Chapter 13 plan.

TRUSTEE'S OPPOSITION

Trustee opposes the motion, stating that Debtor has not indicated how much insurance proceeds were received and how much was spent on funeral and burial expenses. The Trustee also asserts that the amount to pay unsecured creditors in a Chapter 7 at $370,615.85, while Debtor is proposing a 34% dividend to unsecured creditors, which would pay $32,690.00. The Trustee is not certain if insurance paid Debtors' mortgage in full and if this is the reason why the equity is not reduced by the amount of the mortgage claim.

DEBTOR'S RESPONSE

Debtor responds, asserting that this Motion is not the time to bring up confirmation issues. Debtor asserts that whether or not there is equity or

funds to pay creditors is not at issue until there is a substitution of a party, which then the Debtor can modify the plan.

CONTINUANCE

The Debtor agreed to provide the Trustee with the necessary information concerning the life insurance policies. If the information provided is determined to be satisfactory, counsel for the Debtor shall prepare an order substituting Natalie Hartman-Whitnack as the representative for the interests of the late co-debtor Walter A. Whitnack. The Trustee shall approve the order as to form and lodge it with the court. The court may then remove this matter from calendar and enter the order substituting Ms. Hartman-Whitnack as the representative of the late co-Debtor.

DEBTOR'S SUPPLEMENTAL RESPONSE

Counsel for Debtors states that Debtor is gathering the relevant documentation and expects to submit a detailed response addressing the Trustee's concerns shortly. Debtor seeks a continuance for an additional 30 days.

The court granted a further continuance to allow the Debtor to file supplemental pleadings with the court documenting the existence of the insurance, all of the insurance proceeds which have been spent, and the location of all remaining insurance proceeds.

SUPPLEMENTAL PLEADINGS

The Debtor filed a supplemental declaration stating that she received a life insurance payout from Professional Engineers in California Government in the amount of $1,500.00 and death benefit from the Veteran's Administration in the amount of $5,186.09. Debtor states the expenses for the funeral and estate totaled $3,554.56, which included costs of cremation, transportation and the funeral.

However, Debtor has failed to provide the court with the information pertaining to the location of the remaining proceeds. Debtor received a total of $6,686.09 in insurance proceeds, but only testifies to $3,554.56 of the total. The court is not satisfied with Debtor's lack of response.

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 Substitute Party filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is denied without prejudice.

44. 09-42762-E-13 NLE-4 WALTER WHITNACK AND NATALIE HARTMAN WHITNACK Peter G. Macaluso

MOTION TO DISMISS CASE 8-27-13 [93]

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

Proper Notice Provided. The Proof of Service filed on August 27, 2013, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee. By the court's calculation, 14 days' notice was provided.

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

The Chapter 13 Trustee moves to dismiss the case on a non-dismissal calendar pursuant to the Civil Minute Order on the Motion to Substitute Party, Dckt. 92. Trustee argues that Debtor has failed to file supplemental pleadings with the court documenting the existence of life insurance, all insurance proceeds spent and the location of the remaining proceeds.

The Debtor not providing sufficient responses to the Motion to Substitute, the court grants the Motion to Dismiss.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

45. 11-29963-E-13 JOHN WOOD **AMENDED MOTION TO MODIFY PLAN**
SDH-1 Scott D. Hughes **7-23-13 [33]**

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 July 22, 2013. By the court's calculation, 50 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 continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. September 24, 2013. 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 the motion, stating he is uncertain if the proposed plan is the Debtor's best effort, as the Debtor has not filed current statements of income or expense in support of the motion.

Additionally, the Trustee states the Debtor's Declaration does not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). The declaration also appears to be missing page 3 of 4.

Debtor re-filed the original declaration, which includes page 3 of 4. Counsel for Debtor also filed a supplemental declaration stating that he is in the process of getting more detailed declaration from the debtor regarding current income and expenses. Counsel states he hopes to have this information for the court and the trustee by the time of the hearing, but if he does not, counsel seeks a continuance.

No current statements of income or expense have been filed to date. Therefore, the court continues the hearing to 3:00 p.m. on September 24, 2013 to allow the Debtor to file updated statements of income or expenses.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to 3:00 p.m. on September 24, 2013.

46. 13-28764-E-13 RAC-1 GORDON/ELIZABETH HARRISON Richard A. Chan MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-1-13 [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 Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 1, 2013. 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 to Value Collateral 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 2530 Moscano Way, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of $168,491.00 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 $281,959.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $15,466.94. 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2530 Moscano Way, Rancho Cordova, 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 $168,491.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

47. 13-28764-E-13 TSB-1 — GORDON/ELIZABETH HARRISON — Richard A. Chan — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 8-7-13 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 2013. 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the September 10, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral. The court having granted the motion to value collateral, the Trustee's objection 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 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 June 28, 2013 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.

48. 12-32067-E-13 JT-2 TERRY ONEAL John A. Tosney MOTION TO MODIFY PLAN 7-26-13 [56]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. 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 July 26, 2013 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.

49. 10-44169-E-13 ANDREW/SHERRY CLARK — MOTION TO REFINANCE
JT-3 John A. Tosney — 8-14-13 [44]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion Incur Debt 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 grant the Motion to Incur Debt. Oral argument may be presented by the parties at the schedules 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 seeks permission to refinance the Debtors' existing mortgage encumbering the residence commonly known as 1661 Messina Drive, Yuba City, California. Debtors state they have been approved for a VA refinance with American Pacific Mortgage, which will be replacing their current first-position mortgage with BAC Home Loans. Debtors states the existing second deed of trust is in the process of being "lien-stripped" as a Class 2 debt. Debtors argue that the refinance would decrease the ongoing first mortgage payment to $1,667.26 per month, which includes property taxes and insurance. Their current payment is $1,770.51. Debtors assert the loan is for $268,500.00 at a fixed interest rate of 3.750% for 300 months.

The Trustee filed a statement of non-opposition.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). 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). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 47. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Debtors Andrew and Sherry Clark are authorized to refinance real property commonly known as 1661 Messina Drive, Yuba City, California according to the terms stated in the Loan Approval filed as Exhibit "A," Docket Entry No. 47, in support of the Motion.

50. 11-36470-E-13 WASIF/IRUM ASGHAR
WW-3 Mark A. Wolff

OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 29 AND/OR MOTION TO CONDITIONALLY DETERMINE THE VALUE OF THE CLAIM PENDING RESOLUTION OF THE APPEAL
7-15-13 [73]

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 Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the court's calculation, 57 days' notice was provided. 44 days' notice is required.

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

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

The court's tentative decision is to continue the hearing on the Objection to Proof of Claim number 29 of the State Board of Equalization to xxxx. 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 29 on the court's official claims registry, asserts $37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773. The Debtor objects to the Proof of Claim on the basis that he was not the responsible party as he was involved in an accident and was not involved in the operation of the business during that period. Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

CREDITOR'S OPPOSITION

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount of $1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of $37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

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).

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

As there is an appeal currently pending regarding the same matter, the court will continue this hearing to be heard after that determination, presuming that such appear can be timely completed. If not, then the bankruptcy court will have to determine the issue as a necessary proceeding for the administration of federal law.

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 California State Board of Equalization 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 hearing on the objection to Proof of Claim number 29 of California State Board of Equalization is continued to xxxx.

51. 13-29770-E-13 CHERRI BURTON **MOTION TO VALUE COLLATERAL OF**
RDS-1 Richard D. Steffan **PNC BANK, N.A.**
7-30-13 [10]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Cherri D. Burton, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 26, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral of the Creditor PNC National Association has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Respondent-creditor PNC Bank, N.A. filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 167 Channing Way, Auburn, California. The Debtor seeks to value the property at a fair market value of $175,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of $182,609.88. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $94,868.00.

CREDITOR'S OPPOSITION

Creditor PNC Bank, N.A. filed a opposition claiming that the property is valued at $253,000.00. The Creditor provided evidence of Broker's Price Opinion to support this value estimate.

PNC Bank, N.A. requests time to have an appraisal prepared for the property. Because the court does not find Creditor's Secured Creditor contention that it "[o]pposes Debtor's Motion in that the Debtor is attempting to treat Secured Creditor as an unsecured claim, **which it is not!**" not determinative, the court will set a discovery schedule in this contested matter. [Otherwise unnecessary emphasis and commentary in original]

The court grants a continuance to allow the parties time to have the real property appraised. The hearing is continued to xxx x.m. on -------, 2013.

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 hearing on the Motion is continued to xxx x.m. on -------, 2013.

52. 13-28675-E-13 TSB-1 — ERIN TAKEHARA-CARO / Seth L. Hanson — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 8-7-13 [15]

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 August 7, 2013. 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 basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. § 343. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation.

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.

53. 11-32476-E-13 PLEXICO MICHAUX — MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 7-26-13 [48]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. 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 July 26, 2013 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.

54. 12-29376-E-13 KENT CHARBONNEAU — MOTION TO CONFIRM PLAN
JML-8 Joe M. Laub — 5-17-13 [142]

CONT. FROM 7-2-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2013. By the courts calculation, 46 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 Trustee objected to confirmation and the court set an evidentiary hearing. The parties resolved the dispute and filed a stipulation, the Trustee agreeing to withdraw his opposition.

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 17, 2013 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.

55. 09-44078-E-13 NLE-1 | **BRETT TECHAU** | **Eric John Schwab** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **8-2-13 [74]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 2, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to set a discovery schedule and a Pre-Evidentiary Hearing Conference for this Objection to Debtor's Claim of Exemptions. 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 objects to Debtor's claim of exemption under California Code of Civil Procedure ("C.C.P.") § 704.140 (no subsection) for "multiple unliquidated post-petition tort claims resulting in personal injury against Ford Motor Company, North Bay Ford Lincoln Mercury, State of California Department of Transportation and Does. Case No. 34-2012-00117787, filed in Sacramento county Superior Court. Actual Value: Unknown."

While the Trustee believes the Debtor is claiming an exemption under C.C.P. § 704.140(a), exempting a cause of action which does not even require a claim of exemption, in the event that the Debtor is attempting to exempt a settlement or award of damages under C.C.P. § 704.140(b), the Debtor has not disclosed the value so the Court cannot determine if it is reasonably necessary. Trustee argues that in the event that the award of damages or a settlement is payable periodically, the claimed exemption exceeds the amount allowed under C.C.P. § 704.140(d).

The Debtor responds, arguing that he intends to claim an exemption under C.C.P. § 704.140(b), and believes that any funds received from his lawsuit will be reasonably necessary for his care and support. Debtor states the superior court case is pending a trial date. This exemption provides,

> (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.
>
> (b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.
>
> (c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.
>
> (d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

The court will have to conduct an evidentiary hearing to determine what portion, if any, of the personal injury recovery (as opposed to non-personal injury damages recovered) are exempt as necessary for the support of the debtor or dependant of the debtor. In this case the Debtor has income of $8,000.00 a month from the corporation he owns. He has one dependant, a 3 year old son. The Debtor pays $550.00 a month in support.

The Debtor's first amended complaint seeks not only personal injury damages, but past, present, and future special and economic damages and punitive damages. Given that the State of California and Ford Corporation are defendants, a $10,000,000, $20,000,000 or higher recovery may not be unexpected if the Debtor prevails. The court cannot determine what portion of the personal injury damages or the amount of the non-exempt non-personal injury

damages in this state court claim are not included in a proper exemption claimed by the Debtor.

The court will set a discovery schedule and Pre-Evidentiary Hearing Conference for this Contested Matter setting the following dates and deadlines:

A. Evidence shall be completed, including the hearing of any discovery motions, on or before -------, 201x.

B. The Pre-Evidentiary Hearing Conference shall be conducted as xxxx x.m. on xxxxxxxxxx, 201x.

56. 11-47278-E-13 ANDREW/AIMEE YUZON MOTION TO INCUR DEBT
PBG-5 Phillip B. Ghaderi 7-25-13 [78]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Incur Debt. Oral argument may be presented by the parties at the schedules 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 seeks permission to purchase a 2011 Nissan Rogue, VIN ending in 50411. The total purchase price is $22,548.27, which includes taxes fees and an additional warranty. The down payment will be $3,000.00, with the total amount financed of $19,548.28 at an 11.9% annual interest rate (negotiated down from 21.99%). Debtors assert the monthly payments will be $405.93 a month for 66 months. Debtor's previous vehicle, after being totaled, netted $12,000.00 from the insurance proceeds. Debtor plans to use the insurance proceeds as the

down payment of the used vehicle and seeking leave from this court to finance the remaining $8,845.63 at 15.99% interest. Debtor also alleges an increase in hourly pay and hours at his place of employment and also alleges a decrease in expenses.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). 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). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase this vehicle. The Debtor owned a 2007 BMW 323I. When it was damaged, the Debtor received and unstated amount of insurance proceeds. The insurance company paid BMW $8,256.69 to release the lien on the 2007 BMW. Rather than using the proceeds to purchase an affordable vehicle, the Debtor seeks to borrow an additional $19,548.28 to purchase a $22,548.27 vehicle.

Here, the transaction appears not to be in the best interests of the Debtor. The loan calls for a substantial interest charge – 11.9%. The Debtor offers no potential options to purchasing a 2011 vehicle for which the seller and lender have a concern about newer car depreciation.

Therefore, the motion is denied without prejudice.

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

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

57. 11-47278-E-13 ANDREW/AIMEE YUZON MOTION TO MODIFY PLAN
PBG-7 Phillip B. Ghaderi 7-31-13 [94]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 41 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 July 31, 2013 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.

58. 12-36378-E-13 MARILYN/JOSHUA JOHNSON
PGM-5 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
8-9-13 [134]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $2,511.28 to $2,320.66. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 4.500% to 4.500% over the next 22.16 years.

However, the Motion fails to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), as it fails to provide a copy of the credit agreement. The Exhibit A attached to the Motion is a copy of the letter with a summary of the proposed terms of the modification agreement. This is insufficient. FN.1.

FN.1 This is not merely a trial load modification for which a future loan modification motion will be required. Here the court, Chapter 13 Trustee, U.S. Trustee, and creditors are deprived of seeing the actual Loan Modification Agreement and terms which are to be approved. While the court does not have a reason to believe that Wells Fargo Bank, N.A. is trying to hide something from the court, the Rules are equally and fairly applied to all parties. It does not require one to have much of an imagination as to how less scrupulous parties could attempt to mislead the court and consumer by hiding the actual agreement and what that less scrupulous creditor would describe as "mere standard, boilerplate terms that really should mean nothing to the consumer or 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 Approve the Loan Modification filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

59. 10-52479-E-13 WW-3 | **ROBERT/DEE DEE DLUGOPOLSKI** Mark A. Wolff | **MOTION TO APPROVE LOAN MODIFICATION** 8-2-13 [67]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

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

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

Seterus, Inc., formerly BAC Home Loans Servicing, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $1,476.08. The modification will

capitalize the pre-petition arrears and provides for interest rate from 4.00% over the next 40 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 Robert James Dlugopolski and Dee Dee Dlugopolski, Debtors, are authorized to amend the terms of their loan with BAC Home Loans Servicing ("Seterus"), which is secured by the real property commonly known as 8433 Shiele Ln, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 70, in support of the Motion.

60. 08-39481-E-13 CJY-2 — ROOSEVELT WILLIAMS AND CATHERINE WILLIAMS-SHAW, Christian J. Younger — CONTINUED MOTION TO MODIFY PLAN, 7-9-13 [50]

CONT. FROM 8-20-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2013. By the court's calculation, 42 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 Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan. No appearance required.

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the motion on the basis that the plan will complete in more than the 60 months proposed, possibly taking up to 70 months. Trustee argues that the plan calls for payments of $919.00 each month, leaving $883.16 each month after projected Trustee compensation and expense. The ongoing mortgage payment is $588.72, leaving $294.44 for other debts. The other remaining debts, not counting late charges total $4,262.75. This total at $294.44 will take approximately 15 months, and Debtors have completed 55 months of their plan. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The Trustee opposes confirmation offering evidence that the Debtor is $919.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also argues that the Additional Provisions contain conflicting provisions and are not properly appended to the plan. The additional provisions are included on the signature page of the plan and are not numbered, as required by the terms of the plan. The first section states that Trustee shall suspend all payments through month 55 of he plan, but month 55 is included in the proposed new plan payments. The Trustee argues that the other provision implies that the $1,752.06 disbursed to Creditor Wilshire Credit Corp/BAC Home Loans Servicing is not authorized but the Trustee is not required to have the creditor return the funds. Thus the terms appear to be conflicting.

CONTINUANCE

The court continued the hearing to allow the Debtors to file a second modified plan which sets forth the additional provisions on a separate page. If the Debtors timely filed the second modified plan, submit to counsel for the Trustee a proposed order granting this motion and an order confirming the plan, no further hearing would be required.

Debtor filed an amended plan on August 27, 2013, with the additional provisions stated on a separate page. Dckt. 64.

The modified 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 Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed August 27, 2013, is confirmed.

61. 13-26481-E-13 MARIA RAMIREZ
NLE-1 W. Scott de Bie

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-20-13 [18]

CONT. FROM 7-16-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 20, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to make the payments called for under the plan. Trustee states that because no educational expenses appear in Schedule J for the adult dependent and no income of the dependent is disclosed, Schedule J will not allow Debtor to pay $135.00 per month with additional expenses.

The Trustee also asserts that the proposed plan is not the Debtor's best effort, as she is proposing to pay for two 2009 Yamaha quadrunners in the amount of $3,087.11 and presumably the $152.00 per month expense. The Trustee argues that if no interest is being paid, the debt would be repaid in 20 months, doubling the plan payment after that time. Trustee states that if the

quadrunners were surrendered, the increase in payments would triple the amount that unsecured creditors would receive.

Additionally, the Trustee states that the Debtor estimates the value of their residence at 135 Hollywood Ave, Vallejo, California as worth $144,000.00 with liens of $131,548.35 (with the equity claimed as exempt), but the Trustee is not certain of the accuracy of the value. The Trustee also believes that the real property was foreclosed on by a bank in April 2012 and does not know if the Debtor lost the property or purchased the property. The Trustee requests more evidence to prove the plan pays unsecured creditors at least what they would receive in a Chapter 7 proceeding.

Lastly, the Trustee argues that the petition may not be filed in good faith. Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren,* 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

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

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

3) The probable or expected duration of the plan;

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

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

6) The extent to which secured claims are modified;

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

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

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

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

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

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

The Trustee argues that Debtor has not fully disclosed information about the claims secured by the property, including listing creditors with a community claim. The Trustee argues the Debtor has not listed these debts on

Schedule D. The Trustee also states that when the Debtor filed a plan at the time the case was filed, $163,561.56 of the debts appear characterized as community debts and are not provided for in the plan.

The Trustee seeks denial of the plan and an order dismissing the case if a new plan is not filed within a reasonable time.

DEBTOR'S RESPONSE

Debtor responds, asserting that the Trustee has opposed the plan on several legal, rather than factual grounds and requests a briefing schedule and final hearing be set by the court so that these issues can be fully presented to the court.

DISCUSSION

Based on the evidence before the court, the Debtor has not met her burden of proving the requirements of confirmation. *See Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Debtor has not clarified any of the issues raised by the Trustee, including the issues of good faith. Based on a review of the prior filing, there appears to be several discrepancies in the information provided in this case, including information regarding the adult dependent (for which additional expenses are claimed), the reasoning for retaining two quadrunners (with payments that are double the proposed plan payment), the status of the real property in order to aid interested parties in determining liquidation analysis, and disclosure of all creditors.

The court continued the hearing to allow the parties to discuss and brief the issues and facts in dispute.

DEBTOR'S SUPPLEMENTAL OPPOSITION

Debtor responds that her daughter's education expenses are covered by grants and educational loans in the name of her daughter only, and there are no educational expenses for the debtor.

Debtor also states that she is not proposing to pay for two quadrunners as her spouse is the only person obligated on this debt. Debtor does agree that when these vehicles are paid off an additional $152.00 would become available to the plan and Debtor concedes that this increase may be incorporated into an order confirming the plan.

Additionally, Debtor argues that Trustee offers no evidence for his contention that the residence may be worth more than scheduled or that the residence may have been foreclosed.

Debtor also argues that the plan has been filed in good faith. Debtor states that she has disclosed accurately and truthfully all of her assets and all of the secured claims. Debtor believes that the issue is whether or not the Debtor must list as her obligations debts owed exclusively by her spouse, but which are secured by property in which she may hold a community interest. Debtor argues that the definition of community property of the estate does not encompass all community property, but only community property that is under the

management and control of the debtor or for which the debtor is personally liable.

Debtor states that she has not management or control of the community property as she has no income and had no say in the purchase, collateralization or payment of the subject debts. Debtor is not on title of the residence or on the registration of the vehicles.

TRUSTEE'S SUPPLEMENTAL REPLY

The Trustee states he is satisfied with the response of the Debtor regarding the student expenses.

The Trustee also agrees that best efforts requires the agreed upon increase in plan payments, once the quadrunners are paid off. The Trustee states that based on the evidence provided by the Debtor, there is not sufficient evidence to show the Debtor can make the plan payment, as she has no income, and only receives and unstated amount of allowance from her non-filing husband.

Additionally, the Trustee argues that he is not certain that the Debtor has met their burden of proof as to the value where the declaration provided appears to base the valuation on some item other than the Debtor's personal opinion or properly introduced opinion of an expert.

The Trustee argues that Debtor has failed to notice parties who are secured by community property of the estate and would be subject to the effects of the discharge. Trustee contends that the Debtor has community property which is property of the estate; the community property has debts against it; in California either spouse has the management and control of the community property; in California, either spouse is required to disclose to the other all material facts about community property and liabilities which may exist against community property; the community property will receive a discharge; failure to schedule community property debts may prevent a creditor from attempting to collect a debt.

COMMUNITY PROPERTY DISCUSSION

According to 11 U.S.C. § 541 (emphasis added),

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> > (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
> >
> > (2) **All interests of the debtor and the debtor's spouse in community property as of the commencement of the case** that is–

> (A) **under the sole, equal, or joint management and control of the debtor**; or
>
> (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

Furthermore, California Family Code § 1100(a) provides (emphasis added),

> (a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, **either spouse has the management and control of the community personal property**, whether acquired prior to or on or after January 1, 1975, with **like absolute power of disposition**, other than testamentary, as the spouse has of the separate estate of the spouse.

California Family Code § 910(a) states (emphasis added),

> (a) Except as otherwise expressly provided by statute, the **community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt**.

Therefore it appears Debtor argument is not founded by California and Federal Bankruptcy law.

However, this dispute raises significant factual and legal issues. As the court understands the Debtor's position, though all of the community property income is included in the estate, her spouse can choose to divert a portion of the income to pay for quadrunners that are not "property of the estate." This point bears further inquiry and evidence.

The court will set a discovery schedule and Pre-Evidentiary Hearing Conference. The Trustee can engage in such discovery as appropriate concerning the value and existence of property of the estate, as well as what expenses are being paid with money that is property of the estate.

Under the proposed Plan the Debtor is able to fund $135.00 a month for 36 months. This will pay Debtor’s counsel, the Chapter 13 Trustee and a 9% dividend (projected to be $2,183 dividend) to creditor holding general unsecured claim. Debtor’s counsel is to be paid $2,200.00 under the Plan. There are no Class 1 Claims, no Class 2 Claims, no Class 3 Claims, no Class 4 Claims, no Class 5 Claims, and no Class 6 Claims. Other than not paying Class 7 general unsecured claims, there appears to be no “rehabilitation” taking place in this case.

Schedule I states that the Debtor is unemployed and her husband has $6,207.07 a month in gross income. There is $1,830.75 a month withheld for payroll taxes and Social Security. This 30% withholding appears to be high,

causing the court to wonder if the Debtors receive or anticipate now receiving a substantial tax refund going forward. Schedule I, Dckt. 1 at 22. Schedule I also lists the Debtors having 3 children dependants. This further indicates that the withholding stated by the Debtors may be excessive.

The Debtor's expenses exhaust all but $135.00 of the income. Schedule J, *Id.* at 23. The expenses include $933.00 a month for vehicle installment payments and $385.00 for transportation. On Schedule B the Debtor lists 3 vehicles (2012 Honda Civic, 2004 Chevrolet Avalanche, and 2005 Chevrolet Blazer), two 2009 Yamaha quadrunners, and a 1996 Kawasaki motorcycle. Schedule B, Id. at 12.

The Debtor lists on creditors with secured claim on Schedule D, no creditors with priority unsecured claims on Schedule E, and $24,262.87 in general unsecured claims on Schedule F. Id. at 17-19. The Debtor states under penalty of perjury that there are no co-debtors for any of these unsecured debts. Schedule H, Id. at 21. On the Statement of Financial Affairs the Debtor states under penalty of perjury that she had no income in 2013, 2012, or 2011 (with all income being that of her spouse). Statement of Financial Affairs Questions 1 and 2, Id. at 25-26.

Two separate and independent requirements for confirming a Chapter 13 plan is that the case was filed and that the plan was filed and prosecuted in good faith. 11 U.S.C. § 1325(a)(7) and (a)(3). In the context of lien stripping and the utilization of a "Chapter 20" this court has addressed the good faith requirement. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case). Merely having a plan to discharge debt and pay counsel, making a minium plan payment, and maintaining the pre-petition lifestyle may not meet that good faith requirement.

The court will afford the Trustee and any other parties in interest the opportunity to conduct discovery. The court will then set an evidentiary hearing as the evidence provided in declaration form is not adequate for the court to determine the credibility of the Debtor's witnesses and good faith.

The court shall issue a Pre-Evidentiary Hearing Conference Order setting the following dates and deadlines:

A. Discovery shall be completed, including the hearing of all discovery motions, by xxxxx, 201x.

B. The court shall conduct a Pre-Evidentiary Hearing Conference at xxxx x.m. on xxxxx, 201x.

62. 12-34482-E-13 PETER BOWLING AND MARILYN MOWRY
LRR-10 Len ReidReynoso
MOTION TO CONFIRM PLAN
7-18-13 [201]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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 and a creditor 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.

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency

through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

> **For Cases filed in the Sacramento Division:**
> United States Attorney
> (For [insert name of agency])
> 501 I Street, Suite 10-100
> Sacramento, CA 95814
>
> **For Cases filed in the Modesto and Fresno Divisions:**
> United States Attorney
> (For [insert name of agency])
> 2500 Tulare Street, Suite 4401
> Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

> IRS
> PO BOX 7346
> Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014.

The Internal Revenue Service has filed a claim in the amount of $122,912.60, all of which is asserted as a priority claim. Proof of Claim No. 7. On February 4, 2013, the Internal Revenue Service filed an amended proof of claim reducing the total claim to "only" $44,165.20, all of which is asserted to be a priority claim pursuant to 11 U.S.C. § 507(a)(8). The

Internal Revenue Service has publically announced that it deems failure to properly serve the Service as required by the Bankruptcy Code to be defective service and no orders entered pursuant thereto are binding on the Service. Whether the court agrees or disagrees with such pronouncement, there is little reason for proceeding when the simple rules of service have been violated.

The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

TRUSTEE'S OPPOSITION

The Trustee opposes confirmation offering evidence that the Debtor is $3,000.00 delinquent in plan payments, which represents multiple months of the $1,500.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

CREDITOR'S OPPOSITION

Creditors Allan Priest and Jennifer Priest, Trustees of the Allan and Jennifer Priest 2006 Revocable Trust; Christopher G. Crain, Trustee of the Christopher G. Crain Revocable Living Trust, Dated November 18, 2009; Cindy Schrader; Adham R. Sbeih; and Socotra Capital, Inc. also object to confirmation of the plan. Together they comprise the creditors who provided loans to Debtor to purchase the real property known as 11905 Borden Road, Herald, California (hereinafter Creditors).

Under the terms of such loan these Creditors were only to be paid interest on the debt until it matured upon March 1, 2014. Creditors argue that as such they are incorrectly classified under the plan as Class 1 claims, which mature after the completion of the plan. Creditors contend that since the debt matures on March 1, 2014, they should instead be placed in Class 2, as the debt will mature before the plan is completed. Creditors provide evidence of this in Exhibit A.

Additionally, Creditors argue that the current plan lists the interest rate for the loan at 0%, while the correct interest rate for the loan is actually 13% as agreed to in the note. However, the additional provisions in the plan appear to provide for a 13% interest rate. Section 6.1c.

The Creditors argue that the Debtors current plan to list the property in question with Dry Creek Realty and to sell it for $975,000 is unrealistic. Debtors argue that the sale price of said property is at a minimum $200,000.00 too high. Creditors argue that the property has a fair market value of $775,000.00. Creditors also argue that Debtors have not provided a plan to market or sell the property. Creditors argue that the Debtors should not be allowed an additional 6 months to sell the property.

In substance, Creditors contend that the minimal $100.00 a month payment while the Debtors speculate on a sale of the property for the $975,000.00 price is a heads I win, tails you lose proposition. The Debtors have nothing at risk, paying $100.00 a month for the use and control of the property, while the obligation and arrearage owed to Creditors grow.

The court concurs with this analysis. Debtors have not provided sufficient explanation for the treatment of Creditor's claim. The Debtors are suing the Property to operate their business outside the bankruptcy case through their corporation Oasis Ranch, Inc. Though the case was filed a year ago (August 2012) the Debtors fail to provide current financial information (income and expenses). Amended Schedule I states that the Debtor receives $2,100.00 each in income from Oasis Ranch, Inc. and an additional $5,000.00 in rent. Amended Schedule I, Dckt. 43 at 7. The only real property owned by the Debtors is that located at 11905 Borden Road. Schedule A, Dckt. 1 at 10. Schedule D lists the Objecting Creditors as having the claim secured by a deed of trust against the Borden Road Property. *Id.* at 16. Schedule G states that the Debtors have no unexpired leases. *Id.* at 26. Though no lease is stated, Original Schedule I also states that the Debtors receive $5,000.00 a month in rent. *Id.* at 28.

This raises several concerns. First, the most recent income and expense information, Amended Schedules I and J (Dckt. 43), states that the Debtors have $7,250.00 a month in Monthly Net Income. Amended Schedule J, *Id.* at 8. However, the proposed plan provides for only a $1,500.00 a month plan payment. The other $7,100.00 just disappears.

Now, as part of their most recent declaration the Debtors just state that Oasis, Inc. doesn't have enough money to pay rent so they just have deleted it from their income. Declaration and Exhibit B improperly attached to Declaration, Dckt. 203 at 10. However, though their corporation cannot afford to pay rent (the corporation operating outside the bankruptcy case), the Debtors are continuing to let it use the property rent free. Then until January 31, 2014 the corporation can use the property rent free while the Debtors (1) generate profits from and within the corporation and (2) the property to see if they can generate a sales price sufficient to pay the secured claims. The plan makes no provision what occurs if the property is not sold by January 31, 2014. Additionally, the plan provides that no property taxes will be paid by the Debtors.

Even at the reduced payments, the Debtors are delinquent in plan payments. This is sufficient to deny confirmation.

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.

63. 13-21082-E-13 LEE/REBECCA JASPER **MOTION TO CONFIRM PLAN**
Pro Se **7-15-13 [69]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2013. By the court's calculation, 61 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 opposes the motion on several grounds.

First, the Trustee states the plan payment will not pay the Class 1 mortgage. The Plan calls for payments of $450.00 per month for 60 months with at least 25% to unsecured claims. The Debtor is proposing to pay Class 1 ongoing mortgage to Wells Fargo Bank in the amount of $1,383.26. The plan payment of $450 does not allow the Trustee to pay $1,383.26 monthly to Wells Fargo as the proposed by the plan.

Second, the Trustee states the plan is not Debtors' best effort as they propose $450.00 per month for 60 months with a 25% divided to unsecured creditors, when the Debtor's projected monthly disposable income is listed as $1,162.00.

Third, the Trustee states the plan fails the Chapter 7 liquidation analysis. The Debtors have $15,660.00 in non-exempt equity in assets, but provide for only a $6,388.00 dividend to creditors. Even after allowing for costs of sale and administration of a Chapter 7 case, this payment is underfunded.

Fourth, the Trustee argues that the Class 1 arrears are not entitled to interest, which Debtors propose to pay 2.05% interest on arrears to Wells Fargo Bank in Class 1.

Fifth, the Trustee argues that the plan will not pay claims as proposed. Trustee states that the Class 1 claims have pre-petition arrears

totaling $26,666.00 in addition to ongoing payments of $1,383.26 and $322.93. The plan proposes payments of $450.00 and the plan will clearly not pay these claims in 60 months.

Sixth, the plan fails to provide for Wells Fargo secured claim for arrears in the amount of $23,707.50 for for the loan of Richard Valasquez listed on Schedule D.

Lastly, the Trustee states the Debtor has listed Santander's 05 Grand Prix to be paid in class 1, but this debt will mature prior to completion of the 60 month plan and should be listed in Class 2.

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.

64. 13-28185-E-13 GAYLE HAAG
NLE-1 Catherine King

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-15-13 [14]

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 August 15, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343.

Additionally, the Trustee opposes confirmation offering evidence that the Debtor is $2,100.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The 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.

65.	**13-29685-E-13 SAC-1**	**YAROSLAV ZAKHARNEV AND INNA PESHKOVA Scott A. CoBen**	**MOTION TO AVOID LIEN OF DS TOWN & COUNTRY, LLC 7-31-13 [11]**

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 creditors, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final 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). 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 Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of DS Town & Country, LLC for the sum of $10,704.71. The abstract of judgment was recorded with Sacramento County on January 19, 2012. That lien attached to the Debtor's residential real property commonly known as 4631 Luxford Court, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $102,000.00 as of the date of the petition. The unavoidable consensual liens total $177,000.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of $1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien

impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 judgment lien of DS Town & Country, LLC, Sacramento County Superior Court Case No. 11UD07275, Book 20120119 Page 1346, recorded on January 19, 2012, with the Sacramento County Recorder, against the real property commonly known as 4631 Luxford Court, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

66. 13-29685-E-13 SAC-2 — YAROSLAV ZAKHARNEV AND INNA PESHKOVA — Scott A. CoBen — MOTION TO AVOID LIEN OF DS TOWN & COUNTRY, LLC — 7-31-13 [16]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final 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). 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 Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of DS Town & Country, LLC for the sum of $10,704.71. The abstract of judgment was recorded with Sacramento County on January 19, 2012. That lien attached to the Debtor's residential real property commonly known as 7409 Sunrise Boulevard, Citrus Heights, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $70,000.00 as of the date of the petition. The unavoidable consensual liens total $75,500.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of $1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 judgment lien of DS Town & Country, LLC, Sacramento County Superior Court Case No. 11UD07275, Book 20120119 Page 1346, recorded on January 19, 2012, with the Sacramento County Recorder, against the real property commonly known as 7409 Sunrise Boulevard, Citrus Heights, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

67. 13-29685-E-13 SAC-3 — YAROSLAV ZAKHARNEV AND INNA PESHKOVA, Scott A. CoBen — MOTION TO AVOID LIEN OF DS TOWN & COUNTRY, LLC, 7-31-13 [21]

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 creditors, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final 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). 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 Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of DS Town & Country, LLC for the sum of $10,704.71. The abstract of judgment was recorded with Sacramento County on January 19, 2012. That lien attached to the Debtor's residential real property commonly known as 291 Orcutt Circle, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition. The unavoidable consensual liens total $250,000.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of $1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 judgment lien of DS Town & Country, LLC, Sacramento County Superior Court Case No. 11UD07275, Book 20120119 Page 1346, recorded on January 19, 2012, with the Sacramento County Recorder, against the real property commonly known as 291 Orcutt Circle, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

68. 13-29685-E-13 SAC-4 | **YAROSLAV ZAKHARNEV AND INNA PESHKOVA** Scott A. CoBen | **MOTION TO VALUE COLLATERAL OF UMPQUA BANK** 7-31-13 [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 July 31, 2013. By the court's calculation, 41 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 to Value Collateral 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 4631 Luxford Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of $102,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid.

701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $107,000.00. Umpqua Bank's second deed of trust secures a loan with a balance of approximately $70,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Umpqua Bank secured by a second deed of trust recorded against the real property commonly known as 4631 Luxford Court, 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 $102,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

69. 13-29685-E-13 SAC-5 | **YAROSLAV ZAKHARNEV AND INNA PESHKOVA** | **MOTION TO VALUE COLLATERAL OF UMPQUA BANK**
Scott A. CoBen | **7-31-13 [30]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral. 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 business equipment, including toner, cleaning station, test printers, and miscellaneous office equipment and inventory. The Debtor seeks to value the property at a replacement value of $3,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the business equipment and the real property known as 4631 Luxford Court, Sacramento, California secures a loan of $70,000.00. However, Debtor has not established that underlying debt is not a purchase-money loan acquired within the 1 year period prior to the filing of the petition. If so, Debtor is statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a)(*). The Debtor has not stated the prima facie case for the requested relief. *See* Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

70. 13-27986-E-13 DEBORAH CANDATE **MOTION TO CONFIRM PLAN**
MET-2 Mary Ellen Terranella **7-26-13 [26]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 46 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 and a creditor 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 Trustee opposes the plan on the grounds that Class 4 of Debtor's amended plan lists the mortgage payment to Wells Fargo Home Mortgage as direct pay. Trustee states that Class 2A lists a debt to Wells Fargo for $2,356.00, which Debtors indicate is for pre-petition arrears. Creditor Wells Fargo Bank, N.A. filed a proof of claim (no. 5) listing arrears of $2,355.84, indicating two months delinquent payments. However, the Debtor's statement of financial affairs does not disclose any payments made to creditors in the 90 days prior to filing, which appears inaccurate.

The Trustee states he cannot determine that the Debtor can make payments called for by the plan, including the two mortgage payments which should now have been paid directly, without a reliable source of information.

Creditor Wells Fargo Bank, N.A. opposes Debtor's motion to confirm on the grounds that the plan fails to provide for the curing of the default on its secured claim.

Counsel for Debtor responds, stating that Debtor amended her plan specifically to provide for Creditor. Debtor states the claim consists of less than $1,500 in mortgage payments, with an added escrow shortage and late

charges. As the arrearage is less than $1,500, Debtor states she provided it in class 2.

However, the arrearage listed in the proof of claim appears to be more than $1,500 as stated by the Debtor. Debtor has not provided any evidence to the contrary. Further, Debtor has not addressed the inconsistency in the Statement of Financial Affairs and the two month arrearage (or possibly less) stated in the proof of claim. Finally, the Debtor has not show a basis for bifurcating the Wells Fargo Bank, N.A. secured claim into Class 2 and Class 4. While it may be cheaper for the Debtor to split the claim and deal with the pre-petition default separately, that is not permitted under the Plan in the Eastern District of California.

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

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

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

71. 08-30687-E-13 JB-9 | **BRAD DRIGGERS AND ELENA CHIECCHI** Jason Borg | **MOTION TO APPROVE LOAN MODIFICATION** 8-9-13 [130]

CASE DISMISSED AS TO ELENA R. CHIECCHI

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 August 9, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

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

Ocwen Loan Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $2,230.00to $1,680.34. The modification will capitalize the pre-petition arrears and provides for interest rate of 4.000% over the next 22 years.

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

The request to waive 10-day Stays of Bankruptcy Rule 6004(g) for Sale of Personally Identifiable Information and Rule 6004(h) for Stay of Order Authorizing Use, Sale, or Lease of Property are inapplicable to a Motion to Approve Loan Modification. Additionally, no basis has been provided the Court for waiver of the Rule 6004 (g) & (h) stay, but merely a request made that it can be waived for unstated reasons. The request for the waiver 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 Approve the Loan Modification filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bradley Driggers, Debtor, is authorized to amend the terms of their loan with Ocwen Loan Servicing, LLC, which is secured by the real property commonly known as 9296 Orange Crest Court, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 133, in support of the Motion.

72. 09-32288-E-13 ERNESTO/KATHLEEN ROMO MOTION TO SELL
SAC-1 Scott A. CoBen 8-12-13 [59]

APPEARANCE OF BRYAN S. FAIRMAN, ATTORNEY FOR GREEN TREE SERVICING, LLC REQUIRED FOR SEPTEMBER 10, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

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 August 12, 2013. By the court's calculation, 29 days' notice was provided. 21 days' notice is required.

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

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

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

Here, the Debtor proposes to sell the real property commonly known as 1131 W. El Camino Avenue, Sacramento, California. The sales price is $128,000.00 and the named buyer is Perito Moreno Holdings, LLC. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 62.

The Trustee filed a non-opposition on August 26, 2013. Dckt. 68.

Green Tree Servicing, LLC has filed a conditional non-opposition to the motion on August 27, 2013, Dckt. 70, stating they do not oppose the sale on the condition that several conditions are included in the order. Green Tree

Servicing, LLC represents to the court and Debtors that it is a "creditor" in this case. The claim for the "creditor," identified as GMAC Mortgage, LLC, was filed on September 3, 2009. Proof of Claim No. 11. On March 21, 2013 a Notice of Transfer of Claim Other Than for Security was filed Green Tree Servicing, LLC, which states that the GMAC Mortgage, LLC claim has been transferred to Green Tree Servicing, LLC. Dckt. 52. No documents evidencing a transfer are attached to the Notice. No amended proof of claim has been filed documenting a transfer of the claim to Green Tree Servicing, LLC.

In connection with other cases this court has ordered Green Tree Servicing, LLC to only file proofs of claim or represent itself to be the creditor when it is actually the creditor as defined by 11 U.S.C. § 101(10). *In re Edwin and Cynthia L. Crane*, Bankr. E.D. Cal. 11-27805, Order Dckt. 124. In the bankruptcy case of John and Susan Jones, Bankr. E.D. Cal. 11-21713, Green Tree Loan Servicing, LLC filed a Notice of Transfer of Claim, similar to the present notice, in which it purported to be the creditor. Pursuant to the court's order to show cause in that case, Green Tree Loan Servicing, LLC represented to the court that such transfer document had been filed in error. Green Tree Loan Servicing, LLC stated to the court,

> "The filing of the Transfer of Claim ('TOC'), which is the subject of the OSC, was a mistake. Green Tree filed the TOC because it was under the mistaken impression that filing a TOC was the proper procedural mechanism for ensuing that Green Tree would receive service of pleadings filed in the Debtors' Bankruptcy Case. However, Green Tree was mistaken. Green Tree should have filed a Request for Special Notice instead. Green Tree apologizes for its error and submits that the filing of the TOC was not done with the intent to mislead the Court or any other party.
> ...
> A. The Filing of the TOC Was a Mistake.
>
> The filing of the TOC was a mistake. The TOC should not have been filed, as the claim of the BONY [Bank of New York Mellon] was not transferred to Green Tree. Rather, the servicing obligations for the BONY were transferred from BOA [Bank of America, N.A.] to Green Tree. As such, Green Tree should have filed a Request for Special Notice, to ensure that it would obtain service of all pleadings filed in the Bankruptcy Case so that it could carry out its servicing obligations on behalf of the BONY. The filing of the TOC was not done with the intent to mislead the Court or cause confusion to any party. See Declaration of Herschel Hoyt [Recovery Bankruptcy Supervisory at Green Tree Servicing, LLC].
> ...
> In the future, Green Tree will not file a TOC unless a claim, as defined by § 101(5), has been transferred to Green Tree. In the circumstance where only servicing obligations on behalf of a c1aimholder are transferred to Green Tree, it will file a Request for Special Notice, to ensure that it receives service of pleadings, such that it is able to carry out its obligations as servicer for the c1aimholder. Based on the foregoing, and the declarations of Nathan F. Smith and Herschel Hoyt, Green Tree respectfully requests that the Court

not impose sanctions upon it for the filing of the TOC and enter an order discharging the OSC.

Green Tree Loan Servicing, LLC response to Order to Show Cause, 11-21713, Dckt. 100. Based upon the representations of error, the court discharged the order to show cause in the Jones case.

Green Tree Loan Servicing, LLC having represented to this court on multiple occasions that it is a loan servicing company in which it provides services to creditors, and is not the creditor (as defined in 11 U.S.C. § 101(10)), the filing of the Notice of Transfer of Claim raises questions for the court. Such appears to be contrary to the representations by counsel for Green Tree Loan Servicing, LLC and express testimony of Green Tree Loan Servicing, LLC employees.

Counsel for Green Tree Loan Servicing, LLC shall advise the court of the documents which Green Tree Loan Servicing, LLC has to establish that it is the creditor in this case and that the claim has been assigned to it.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to sell property filed by the 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 Ernesto and Kathleen Romo, the Debtor ("Debtor"), is authorized to sell to Perito Moreno Holdings, LLC or nominee ("Buyer"), the residential real property commonly known as 1131 W. El Camino Avenue, Sacramento, California ("Real Property"), pursuant to 11 U.S.C. § 363(b), on the following terms:
>
> 1. The Real Property shall be sold to Buyer for $128,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 97.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.

6. The Debtor is authorized to receive the $3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

73. 13-28189-E-13 GG-1 TONY/MARGARITA CERVANTES Gerald B. Glazer MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 7-16-13 [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*), Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral. 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 2009 Ford Escape XLT. The Debtor seeks to value the property at a replacement value of $9,070.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan of approximately $24,825.00. However, Debtor has not established that underlying

debt is not a purchase-money loan acquired within the 910-day period prior to the filing of the petition. If so, Debtor is statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a)(*). The Debtor has not stated the prima facie case for the requested relief. *See* Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

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

74. 13-28189-E-13 GG-2 — TONY/MARGARITA CERVANTES — Gerald B. Glazer — MOTION TO VALUE COLLATERAL OF MORTGAGE ELECTRONIC REGISTRATION SYSTEM — 7-23-13 [19]

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 July 23, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

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

Debtors seek to value the collateral of "Mortgage Electronic Registration System ('MERS') as Nominee for RBS Citizens, N.A." There are several issues with this Motion.

The Movant does not provide evidence that MERS is the creditor (as defined in 11 U.S.C. § 101(10)) in this case. The Movant actually shows that MERS is not the creditor but merely a placeholder on the deed of trust for the actual creditor. A Motion to Value the Collateral of a secured claim values just that: the creditor's secured claim, not any interest of the nominee for purposes of the deed of trust. This court recently addressed how MERS functions:

> While many consumers have blunted their spears on the issue of whether the deed of trust was assigned, it is clear under California law that the relevant issue is who owns or has the right to enforce the note. It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. Therefore, if one party receives the note and another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred. *Adler v. Sargent*, 109 Cal. 42, 49-50 (Cal. 1895).
>
> In 2011, the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, (9th Cir. 2011). The creation of the Mortgage Electronic Registration Systems, Inc. ("MERS") by lenders to facilitate multiple transfers of promissory notes as part of securitized loan portfolio trading is at the root of many of these timing and document of transfer issues. The purpose of creating MERS was to avoid the recording of assignments of deeds of trust while promissory notes were transferred from investment portfolio to investment portfolio. Only when the ultimate buyer would have to foreclose would MERS then stop acting as the "nominee" for the original lender and its assigns. Thus, it is not unusual for there not to be an assignment of the deed of trust every time a promissory note is transferred from buyer to subsequent buyer. Instead, only at the eleventh hour when the final buyer has to proceed with a non-judicial foreclosure sale is an assignment of the deed of trust recorded. No evidence has been presented that the assignment of the Deed of Trust was anything other than an assignment to identify Defendant as the person entitled to have the Deed of Trust enforced when it was time have the trustee proceed with a non-judicial foreclosure sale due to the monetary defaults.

Macklin v. Deutsche Bank Nat'l Trust Co. (In re Macklin), 495 B.R. 8 (Bankr. E.D. Cal. 2013). MERS not being the creditor, the court has no claim before it to value.

The Motion also suffers from several fundamental flaws which precludes the granting of relief. First, the Motion does not clearly identify the person against whom the relief is requested. The title to the Motion is "Motion for Order Valuing Collateral of Mortgage Electronic Registration System ('MERS') as Nominee for RBS Citizens, N.A." However, nowhere in the motion itself do the Debtors state that they request the court to enter an order "against" or "determining the rights of" any specific person. The court and parties should be able to read the plan language of the motion itself and figure out who the parties are and whose rights will be determined.

Second, the Motion states that MERS as the nominee for RBS Citizens, N.A. has a second deed of trust in the amount of approximately $23,479.75. Since the deed of trust can only secure the debt, then what must be meant is that MERS, solely as a nominee, has a deed of trust securing a debt in the amount of $23,479.75. However, it is well established law that the person who owns the debt also "has" the deed of trust. A deed of trust does not have an identity separate and apart from the note it secures.

Possibly the motion is intended to seek relief against RBS Citizens, N.A., but that it not clearly stated. The court will not guess at the target creditor when it is such a simple task for the Debtors to clearly state the target creditor against whom relief is requested.

Third, the Debtors only ask that the court value the 4830 Silverado Street Property at $306,944.00. The court cannot fathom what impact issuing such an order, not directed against any person, could have in this case. A bankruptcy judge may value a creditor's secured claim pursuant to 11 U.S.C. § 506(a). While the court must value the creditor's interest in the debtor's interest in the property which secures the creditor's claim, § 506(a) does not provide for the determination of the value of property for no reason.

Possibly the Debtors may argue, "look, this is so simple even judges understand that we really want an order which determines pursuant to 11 U.S.C. § 506(a) the value of RBS Citizens, N.A. secured claim, for which the Silverado Street Property is collateral, to have a value of $0.00. Then, the balance of the claim is a general unsecured claim. If this is so simple to understand, the court is at a loss as to why it could not be so simply, clearly, and accurately stated by the Debtors.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this loan servicing company is a creditor in this case. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. No motion has been filed seeking to value the claim of the actual creditor, no service has been attempted on the actual creditor, and no effort made to afford the actual creditor any due process rights. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor,

having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

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

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

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

75. 10-38292-E-13 BRIAN/CONNIE KONO **MOTION TO APPROVE LOAN**
PD-1 Richard A. Chan **MODIFICATION**
8-8-13 [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, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

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

JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $5,740.40 to $4,116.37. The modification will capitalize the pre-petition arrears and provides for interest rate of 7.375% over the next 32.75 years.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by 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 Brian Scot Kono and Connie Sue Kono, Debtors, are authorized to amend the terms of their loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 9642 Saren Court, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "3," Docket Entry No. 47, in support of the Motion.

76. 13-29892-E-13 TOG-1 | **RAFAEL/LEAH ROBLES** **Thomas O. Gillis** | **MOTION TO VALUE COLLATERAL OF STATE FARM BANK, F.S.B.** **8-1-13 [10]**

Final Ruling: The case having previously been converted to a case under Chapter 7, the Motion is denied as moot.

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

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

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

IT IS ORDERED that the Motion is denied as moot, the case having been converted.

77. 13-24993-E-13 DENNIS/SANDRA CUVA — MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso — 7-22-13 [46]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 22, 2013 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.

78. 10-30294-E-13 STEPHEN/JANET MAGGARD MOTION FOR ENTRY OF DISCHARGE
MTM-2 Michael T. McEnroe 8-2-13 [72]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 2, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks an order entering her discharge. However, the Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that the Debtors seek an order discharging the Chapter 13 case and the basis for the motion is set forth in the Declaration. This is not sufficient to establish the right to discharge.

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."

TRUSTEE'S OPPOSITION

The Trustee also opposes the motion on the grounds that he is uncertain if Debtors are seeking a discharge for co-debtor Stephen J. Maggard, who passed August 14, 2013. The Trustee was not notified until May 20, 2013, from Debtor's declaration of the death. Trustee argues that Mr. Maggard is not entitled to a discharge. No motion to substitute party or motion to allow further administration of the case have been filed to date.

DEBTOR'S RESPONSE

Debtor responds that he "has no problem" with the Trustee denying a discharge as to Mr. Maggard but granted as to Mrs. Maggard.

Counsel would be wise to consider Federal Rule of Bankruptcy Procedure 1016 as well as 9013. The court denies the motion without prejudice.

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

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

79. 13-22995-E-13 DANIEL/MARIA BASHAM MOTION TO CONFIRM PLAN
ADR-4 Justin K. Kuney 7-19-13 [61]

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 July 19, 2013. By the court's calculation, 53 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.

SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
PO BOX 7346
Philadelphia, PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

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

TRUSTEE'S OPPOSITION

The Trustee offers evidence that the Plan is not Debtors' best effort. The Statement of Monthly Income (Form 22C) shows that Debtors' monthly disposable income totals $1,742.97. When applied to the relevant commitment period of 60 months, unsecured creditors are entitled to at least $104,578.20. Debtors, however, propose to pay a 17% dividend, or $24,577.07 over the life of the Plan. Trustee argues that Debtors deduct $175 per month for potential tax liability for default on a 401k loan Daniel had with a previous employer, but that will end upon Debtor's filing of the 2013 tax return and the payment should increase at that time. Since the Plan does not fully pay all claims, it

must devote all of Debtors' disposable income to pay unsecured creditors. 11 U.S.C. §1325(b)(1). As Debtors' Plan fails to do so, it cannot be confirmed.

Trustee also argues that the plan relies on a pending motion to Value Collateral. The court having granted the motion, the Trustee's objection on this basis is overruled.

Lastly, the Trustee argues the motion does not comply with Federal Rule of Bankruptcy Procedure 9013, as it does not address the history of this case.

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

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

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

80. 13-30296-E-13 SJS-1 — EUBLOGIO OLIVARES — Scott J. Sagaria — MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC — 8-8-13 [12]

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 August 8, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to value the collateral of "Green Tree Servicing, LLC." This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this loan servicing company is a creditor in this case. Declaration, Dckt. 14. The Debtor does not testify that he borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Green Tree Servicing, LLC. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the third deed of trust. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. No motion has been filed seeking to value the claim of the actual creditor, no service has been attempted on the actual creditor, and no effort made to afford the actual creditor any due process rights. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court is also shocked that attorneys who regularly appear in this court could make such a fundamental blunder.

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

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

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

81. 13-30998-E-13 RALPH SETTEMBRINO MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 8-23-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on August 23, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 12-24718-A-13J) was dismissed on August 5, 2013, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 12-24718-A-13J, Dckt. 34, August 8, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and that she has fulfilled all of her duties and obligations as a Debtor in this bankruptcy and fully intends to complete her responsibilities as a debtor. Debtor states that he has an autistic son and family members usually care for him were out of town for an extended period of time. Debtor states he had to pay for full time childcare for over a month and had to miss work for a week. This caused him to fall behind in plan payments. Debtor states his child care problem was resolved when his family returned and he no longer has child care costs.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she will not have to replace her hot water heater, stove or heater unit during this bankruptcy, which was why she could not afford plan payments previously. Debtor now asserts that she has sufficient income that will allow her to perform under the new Chapter 13 plan.

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.

82. 13-23599-E-13 IVAN MONTELONGO MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso 7-26-13 [48]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 46 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 Trustee opposes the plan on the grounds that the plan exceeds 60 months with the claims filed. The Trustee calculates the plan will complete in 110 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee states the total debt being paid through the plan totals $219,227.20 and the Debtor is paying a total of $168,000.00 into the plan.

The Trustee also objects as the Debtor proposes to value the secured claim of Charles Cumming, Jr., but has not filed a motion to value collateral.

Debtor responds, stating that he is in the process of filing a motion to avoid lien of the secured claim of Charles Cummings. Debtor also states the plan is over-extended based on the pending exam by the Internal Revenue Service for the 2009 tax year. The Debtor asserts that the exam will not result in anywhere near $45,000.00 liability.

However, no motion to value collateral or motion to avoid lien has been filed to date.

Therefore, 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.

83. 13-28099-E-13 MICHIE SCHMITZ
TSB-1 Geoffrey A. Sutliff

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-7-13 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 2013. 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 several different grounds, including:

I. Counsel failed to appear at the 341 meeting;

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

III. Debtor is attempting to modify a secured claim on his primary residence;

IV. Debtor failed to value collateral;

V. Debtor failed to provide for all secured claims;

VI. The plan exceeds 60 months;

VII. Debtor failed to disclose all assets on Schedule B;

VIII. Debtor failed to report all debts;

IX. Debtor provided an incomplete Statement of Financial Affairs;

X. Debtor has not filled out Form B22C;

XI. Debtor failed to produce tax documents to the Trustee; and

XII. Debtor failed to provide income verification.

The Trustee also filed a motion to dismiss based on several of the same grounds set on September 4, 2013. The court conditionally granted the motion, with the case being dismissed if the Debtor has not filed and served an amended plan, motion to confirm, and supporting pleadings on or before September 13, 2013.

The current 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.

84. 13-30488-E-13 KIM BUONOCORE
ALF-1 Ashley R. Amerio

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
8-9-13 [8]

CONT. FROM 8-27-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to deny the Motion to 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:

PRIOR HEARING

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 12-40455-C-13C) was dismissed on June 13, 2013, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 12-40455-C-13C, Dckt. 29, June 13, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and that she has fulfilled all of her duties and obligations as a Debtor in this bankruptcy and fully intends to complete her responsibilities as a debtor. No allegation is made in the Motion as to (1) who may not have adequately advised the Debtor and (2) how this led to the prior case being dismissed. No other well pleaded allegations are set forth with particularity in the Motion as the grounds (Fed. R. Bankr. P. 9013) upon which the requested relief is based.

Debtor testifies that the dismissal of the prior case was not due to the willful inadvertence or negligence on her part and she is unable to determine if she was properly advised as to her rights and responsibilities to the court and the Trustee in the prosecution of her prior case.

While "laying the blame" for the dismissal of the prior case on some unidentified person not adequately advising the Debtor of her obligations and duties in a Chapter 13 case, the court review of the file in the Debtor's prior case, 12-40455, discloses that the person failing to properly advise the Debtor was a different attorney than her counsel is the present case. But no explanation is provided as to what may not have been adequately advised for the Debtor. The Debtor successfully confirmed a plan in the prior case, which is indicative of a debtor receiving competent advice.

The Debtor does not address what has changed in her circumstances so that this bankruptcy case will succeed. The order dismissing the prior bankruptcy states Debtor failed to make plan payments. The Notice of Default in the prior case states that the Debtor was $4,908.00 in default, with another plan payment of $3,386.00 coming due. 12-40455, Dckt. 24. The proposed plan in the present case requires monthly plan payments of $3,715.00, even more than the payment the Debtor defaulted on in the prior case.

Debtor does not address this failure to make plan payments or how she is now able to make plan payments. To the extent that the "Debtor" was not advised of an obligation in the prior case, the court has not been presented with any evidence that she did not know that she was obligated to make a $3,386.00 monthly payment to the Chapter 13 Trustee.

For the present Motion, Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

CONTINUANCE

The court continued the hearing to allow Debtor to file a supplemental declaration stating why the current amended plan will work and why the prior plan did not.

No supplemental pleadings have been filed to date.

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

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