UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 24, 2013 at 3:00 p.m.

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1. 11-20804-E-13 KHAMPHAY SENGSOUVANG — MOTION TO MODIFY PLAN
SDB-5 W. Scott de Bie — 8-20-13 [81]

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 20, 2013. By the court's calculation, 35 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 August 20, 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.

2. 10-36505-E-13 DONNA VICKS
PLC-3 Peter L. Cianchetta
MOTION FOR SUBSTITUTE AFTER DEATH OF DECEASED DEBTOR
8-26-13 [40]

Local Rule 9014-1(f)(1) Motion - Non-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 26, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Substitute After Death 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 Substitute After Death is granted. No appearance required.

Michael Vicks, Jr., successor in interest to Debtor Donna Vicks, moves the court for an order substituting Michael Vicks, Jr. in place of Debtor pursuant to Federal Rule of Civil Procedure 25(a) and Federal Rules of Bankruptcy Procedure 1016 and 7025.

Mr. Vicks states that Debtor, his mother, passed away on June 29, 2013. Dckt. 39. A Suggestion of Death was filed on August 16, 2013. Mr. Vicks argues that it is necessary and essential for him to be substituted so the case may proceed to conclusion and discharge. Mr. Vicks states that he is the sole surviving heir to his mother and has lived with her his entire life. Mr. Vicks states that he is familiar with Debtor's financial affairs. Mr. Vicks states that Debtor did not have life insurance or other death benefit and he personally paid her final expenses.

Trustee filed a statement of non-opposition on September 9, 2013.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party**. There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which

> is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Mr. Vicks has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the Motion to Substitute Party.

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 Substitute After Death 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 granted and Michael Vicks, Jr. is substituted as the successor-in-interest to Donna Vicks and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

3. 12-30905-E-13 JOSEPH DEHAAN
JT-4 John A. Tosney

MOTION TO VALUE COLLATERAL OF FIRST NORTHERN BANK OF DIXON
8-23-13 [49]

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 Joseph William Dehann, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 23, 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 $11,010.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a business consisting of a business bank account and property assets of the business. The Debtor seeks to value the property at a replacement value of $11,010.00 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 and the business asset secures a loan incurred more than one year prior to filing of the petition, with a balance of approximately $49,782.64. 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 $11,010.00. *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 First Northern Bank of Dixon secured by assets described as a bank account and property business assets are determined to be a secured claim in the amount of $11,010.00, 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 $11,010.00 and is encumbered by liens securing claims which exceed the value of the asset.

4. 09-45606-E-13 CHARLES/KATHLEEN HIGGINS MOTION FOR SUBSTITUTION
SDB-5 W. Scott de Bie 8-29-13 [57]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion for Substitution. 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:

Co-debtor Charles K. Higgins moves to be substituted as a party for his wife and co-debtor Kathleen Higgins, who passed away on March 5, 2013. Debtor also provides the suggestion of death in this same pleading.

Co-Debtor Charles K. Higgins testifies that he holds and controls all assets formerly possessed by his wife and himself jointly. He also testifies that he is the successor to the estate of his spouse under California Probate law and he can reasonably and timely prosecute actions needed to properly administer this case to conclusion.

The Chapter 13 Trustee filed a statement of non-opposition on September 9, 2013.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party**. There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in

> terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, co-debtor has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the Motion to Substitute Party.

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 Substitution filed by co-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 Co-debtor Charles K. Higgins is substituted as the successor-in-interest to Kathleen Higgins and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

5. 13-29014-E-13 CLEMENTE/DIANNA OROPEZA — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
DPR-1 David P. Ritzinger — 8-16-13 [16]

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

Incorrect 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 16, 2013. By the court's calculation, 39 days' notice was provided. 28 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)(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:

Debtors seek an order valuing the collateral securing the claim of Wells Fargo Bank, N.A. ("Creditor.") However, Debtors failed to serve the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor Wells Fargo Bank, N.A. is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Wells Fargo Bank, N.A. at several locations, including at the address stated on the FDIC and California Secretary of State for the Bank, but served only one address by certified mail - to the Agent for Wells Fargo Bank, N.A., Corporation Service Company dba CSC - Lawyers Incorporation Service. However, Rule 7004(h) states that service must be made by certified mail addressed to an officer of the institution. An agent is not an officer of the institution. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 346 (4th Cir. 2003) (holding that nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h) — which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 — indicates that Congress intended for "officer" to include a registered agent). None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

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 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.

6. 10-33522-E-13 JOHN/ANN LAMMON — MOTION TO MODIFY PLAN
RIN-5 Michael Rinne — 8-20-13 [75]

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 20, 2013. By the court's calculation, 35 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 August 20, 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.

7. 13-24524-E-13 KEYVAN GHASEMPOUR — MOTION TO APPROVE LOAN MODIFICATION
PGM-2 Peter G. Macaluso — 8-22-13 [44]

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 22, 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.

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 $1,931.51 to $1,831.49. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.000% to 3.875% from August 1, 2013 to December 1, 2046.

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

IT IS ORDERED that Debtor, Keyvan Ghasempour, is authorized to amend the terms of their loan with Ocwen Loan Servicing, which is secured by the real property commonly known as 155 Tomlinson Drive, Folsom, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 47, in support of the Motion.

8. 12-33526-E-13 ARBERZINE FISHER **MOTION TO CONFIRM PLAN**
SJS-5 **8-12-13 [102]**
CASE DISMISSED 9/5/13

Final Ruling: The case having previously been dismissed, 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 Confirm Plan 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 already been dismissed.

9. 13-25926-E-13 GLENN/JACKIE LOWERY — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK
DAO-2 Dale A. Orthner — 8-14-13 [42]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral was not correctly 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 24, 2013 hearing is required.

The motion seeks to value the secured claim of "JP Morgan Chase Bank." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

To the extent the motion is meant to target JPMorgan Chase Bank, N.A., JPMorgan Chase Bank, N.A. - a federally-insured depository institution - was not served as required by Federal Rule of Bankruptcy Procedure 7004(h). Rule 7004(h) requires that service upon a federally-insured depository institution be made upon an officer of the institution by certified mail. Here, Debtors served CT Corporation System, the agent for service of process. Nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h), which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, indicates that Congress intended for "officer" to include a registered agent. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 346 (4th Cir. 2003). Debtor's service upon CT Corporation System, which is the registered agent for JPMorgan Chase Bank, N.A., is insufficient.

CREDITOR'S OPPOSITION

Creditor Pennymac Mortgage Investment Holdings, LLC, (an entity neither named or served in the motion) opposes the motion, seeking time for an opportunity to appraise the subject real property. However, this opposition is not timely filed, as all written opposition is required fourteen (14) days before the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1). This opposition was filed five (5) days before the hearing.

Denial of the Motion without prejudice is proper. The Debtor can communicate with the entity purporting to be the creditor and determine if the motion should be filed against that entity. The Debtor can also coordinate the filing of the motion naming the correct party and properly serving it with a request by that creditor for a reasonable time to conduct the appraisal. If the creditor fails to act promptly and after a reasonable time the Debtor files a motion value the secured claim, the creditor should not believe that would be further continuance so that it could belatedly conduct its investigation.

The court notes the denial of this motion will allow the parties an opportunity to appraise the property.

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.

10. 13-22028-E-13 FAITH EVANS — MOTION TO CONFIRM PLAN
BLG-2 Bruce Charles Dwiggins — 7-25-13 [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 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, 60 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 argues that Debtor's plan may fail the Chapter 7 liquidation analysis because Debtors originally indicated non-exempt equity of $8,935.43 from the listed value of the Debtor's liquor license but amended the schedules, listing the value of the license as $0.00 but indicating the value of $75,000.00 is in dispute. Trustee states the motion to confirm indicates that the non-exempt equity that is listed in Debtor's plan is to be distributed to unsecured creditors, and the amended plan proposes to pay 0% to unsecured creditors. The additional provisions propose to address any liquidation issue by a modified plan after resolution of the disputed property. The Trustee states that if the court grants the motion, it would be limiting the amount to unsecured to $8,935.43, even if the license has a value of $75,000.00.

The Debtor's proposed "carve-out" of the value of the liquor license is not reasonable or consistent with the fiduciary obligations of a Chapter 13 Debtor. The plan terms are,

> " Section 6.01: Section 2.15 – The percentage to unsecured has been changed to 0.00%. Certain assets are currently in dispute with a creditor as to what portion, if any, of the asset is property of the Debtor community property and therefore property of the estate. These issues are being going to be decided by an adversary proceeding. Upon the Court's decision in the adversary action, Debtor will file an amended Schedule B & C and if necessary a modified plan and motion to confirm to address any liquidation issue arising from the Court's ruling."

Dckt. 66. The Plan provides that the Debtor has paid $1,240.00 into the plan in the first four months, and then will pay $114.00 a month for months 5 through 60. Over the life of the Plan this will generate a total of $7,624.00 in plan payments. The Plan provides for the payment of $3,073.00 in a priority Internal Revenue Service claim, Debtor's counsel's fees, and Chapter 13 Trustee fees. No other payments are provided for under the proposed Plan. No provision is made for the recovery of any assets through the litigation, those assets liquidated, and the proceeds paid to the Trustee for distribution to creditors.

In her Declaration the Debtor updates her financial information. Since closing her business the Debtor has no income. Her daughter pays the Debtor $750.00 a month for babysitting. For Expenses, the Debtor states that she now only pays $50.00 a month for transportation, and has no housing, food, clothing, utilities, and other day-to-day expenses. The Declaration confirms that the Debtor's daughter is providing these necessary expense items for the Debtor. However, based on the Declaration, the Debtor has $700.00 a month of surplus money each month over her expenses as stated under penalty of perjury.

The court has reviewed the files related to this case and no adversary proceeding has been filed.

From the Pleadings and the proposed Plan, this Plan cannot be confirmed. The Debtor is not providing her projected disposable income, as stated in her Declaration, to fund the Plan. The Plan does not provide for

litigation to advance the estate's rights in assets and then the non-exempt portion to fund the plan. No adversary proceeding has been filed to determine the rights of the parties, even though the sale of a liquor license is all but assured.

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.

11. 13-24029-E-13 KEVIN GIPSON — CONTINUED MOTION TO VALUE COLLATERAL OF WMC MORTGAGE CORPORATION
SDB-1 W. Scott de Bie — 4-22-13 [15]

CONT. FROM 8-6-13, 5-21-13

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

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 April 22, 2013. By the court's calculation, 29 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 to 3:00 p.m. on _____, 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:

PRIOR HEARINGS

Debtor seeks to value the collateral of "WMC Mortgage Corporation" and possibly "Securitized Asset Backed Receivables, LLC, Trust 2006-Wm2 Mortgage Pass-Through Certificates, Series 2006 Wm2." First, the court cannot determine which legal entity the motion targets. The court will not knowingly issue orders that name incorrect parties or persons it cannot identify from the pleadings. Second, the California Secretary of State shows that "WMC Mortgage Corporation" is no longer active.

On Amended Schedule D the Debtor lists WMC Mortgage Corporation, c/o Ocwen Loan Servicing, LLC as the creditor having the claim secured by the second deed of trust. Dckt. 20. No information is provided as to responses to inquiries made to Ocwen Loan Servicing, LLC to identify the creditor who currently has this claim.

Though the court denies the motion as to "WMC Mortgage Corporation" and possibly "Securitized Asset Backed Receivables, LLC, Trust 2006-Wm2 Mortgage Pass-Through Certificates, Series 2006 Wm2," it is without prejudice to determining the value of a claim pursuant to 11 U.S.C. § 506(a) of whomever is the actual creditor. Before filing a new motion the Debtor shall avail himself of the right to conduct informal discovery and Rule 2004 court ordered discovery to identify the creditor holding the claim. Given that Ocwen Loan Servicing, LLC is the loan servicer and regularly appears in this court, it is highly likely that an informal inquiry could provide this information for the Debtor.

APPLICATION FOR EXAMINATION

On July 11, 2013, Debtor filed an Ex-parte Application for Order of Examination under Federal Rule of Bankruptcy Procedure 2004(a). The court granted the Application and authorized Attorney Scott de Bie to examine the keeper of records of Ocwen Loan Servicing, LLC on the subjects specified in Federal Rule of Bankruptcy Procedure 2004(b) on July 15, 2013. Dckt. 28. The Order states the examination shall not be scheduled earlier than 30 days after service under Federal Rule of Bankruptcy Procedure as the production of documentary evidence is requested.

MOTION TO COMPEL

The court notes that the Debtor filed a Motion to Compel on September 16, 2013, for Ocwen Loan Servicing, LLC to respond to Debtors' Request for Production of Documentary Evidence.

As the Debtor is availing himself of the right to conduct discovery to identify the creditor holding the claim, the court continues the motion to value the secured claim to allow time for discovery.

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 to Value is continued to 3:00 p.m. on _____, 2013.

12. 13-29429-E-13 MARK/EMILY GONZALES — MOTION TO CONFIRM PLAN
SDB-2 W. Scott de Bie — 8-5-13 [17]

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 5, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to confirmation on the basis that Debtor proposes additional provisions which indicate that the Debtors are attempting to obtain a loan modification but fail to provide a time line for which the Debtors and the creditor have to report the approval or denial and when creditors can anticipate a modified plan.

The Trustee suggests the "Ensminger Plan Provisions" which provides a series of terms relating to a prospective loan modification should be amended into a Chapter 13 Plan. Such provisions make it clear that the court is not modifying a claim secured only by the Debtors' residence and a mechanism for addressing the granting or denial of a loan modification. The court agrees that Debtor should consider using such terms in order to properly provide for the secured claim. Based on the current proposed plan, the motion is denied.

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. 13-26330-E-13 BARRY HENNING — MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso — 8-8-13 [27]

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 8, 2013. By the court's calculation, 47 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 August 8, 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.

14. 10-45831-E-13 GREGORY HAUBERG — MOTION TO MODIFY PLAN
BLG-5 Bruce Charles Dwiggins — 8-6-13 [61]

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 6, 2013. By the court's calculation, 49 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 August 6, 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.

15. 08-29032-E-13 WW-10 DOREL/MIHAELA GHERMAN Mark A. Wolff

CONTINUED AMENDED MOTION FOR COMPENSATION BY THE LAW OFFICE OF WOLFF AND WOLFF FOR MARK A. WOLFF, DEBTORS' ATTORNEY(S), FEES: $23,085.00, EXPENSES: $463.73
8-20-13 [209]

CONT. FROM 8-6-13

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

Notice and Service Appear to be Correct. 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 27, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Final Ruling: The Application for Fees 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 Application for Fees is granted. No appearance required.

PRIOR HEARING

Wolf & Wolf, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case for work related to Debtors' Objection to Claim and Notice of Mortgage Payment Change by Countrywide Home Lending, Bank of America, and Bank of NY. Counsel argues that the evidentiary hearing on the matter was heard on June 12, 2013 and the court ruled that the mortgage creditor breached the contract as modified by the Chapter 13 plan and awarded Debtors $1,000.00 in damages for emotional distress and $11,500.00 in damages for loss of income. Counsel argues that the award of fees flows from the court's finding for Debtors and the original contract between the parties allowing for the award of attorney fees in both the Note and Deed of Trust.

REVIEW OF MOTION

The Motion appears to be modeled after a motion for allowance of attorneys' fees and costs pursuant to 11 U.S.C. §§ 330 or 331. The Motion makes reference to the court awarding $1,000.00 emotional distress damages and $11,500.00 in economic loss damages on the Debtors' counter-claim against The Bank of New York Mellon, fka The Bank of New York, as Trustee. Judgment, Dckt. 195. (The parties agreed to conduct an evidentiary hearing, rather than an adversary proceeding to adjudicate the objection to claim and counter-claim of the Debtors against the Bank.)

As part of the judgment, the court ordered that a motion for attorneys' fees and a costs bill, if any, was to be filed and served on or before July 31, 2013. This motion for attorneys' fees is one in which the opposing party, Bank of New York Mellon, fka The Bank of New York, as Trustee, pay the Debtors' attorneys' fees. This is something separate and apart from whether counsel is allowed fees as counsel for the Debtors.

FN.1.

FN.1. As a practical matter, the court determining reasonable attorneys' fees and costs that the Bank has to pay the Debtors, such amount can only be for the attorneys' fees paid, or to be paid, to counsel. An attorney cannot split fees recovered from an opposing party with his client.

The Motion makes reference to the court allowing attorneys' fees, and then ordering "Bank of America" to pay the legal fees. The various responsive pleadings to the objection to claim were filed by the attorneys for Bank of New York Mellon, fka The Bank of New York, as Trustee. While it is true that witnesses were from Bank of America, N.A., it was doing so as the servicing company for Bank of New York Mellon, Trustee, the creditor whose rights were being litigated. Bank of New York Mellon, Trustee, filed the response to the objection to claim, expressly identifying itself as the creditor. Dckt. 117. It appears that the Debtors have attempted to collapse a motion to be awarded fees as a prevailing party with counsel for the Debtors obtaining approval of the fees.

PRIOR DISCUSSION

Debtors seek attorney fees pursuant to Civil Code Section 1717(a), which provides for attorney fees where the contract specifically provides attorney's fees, which are incurred to enforce the contract, to the prevailing party. Debtors state Paragraph 7(E) of the note and Paragraphs 14, 19 and 22 of the Deed of Trust specifically provide for an award of attorney fees. Debtors assert that as a result of the breach of contract by Countrywide Home Lending, Bank of America, and Bank of NY, they have incurred attorney fees totaling $23,085.00 and costs in the amount of $463.73.

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court.

California Civil Code section 1717(a) provides:

> In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Here, Debtors direct the court to two specific contractual provisions for attorney fees: Paragraph 7(E) of the note and Paragraph 14, 19 and 22 of the Deed of Trust. Paragraph 7(E) of the Note similarly provides for the Note Holder to have costs and expenses, including reasonable attorney fees, for enforcing the note. Paragraphs 14, 19 and 22 of the Deed of Trust provides for Acceleration and Remedies for the Lender, including reasonable attorney's fees.

Debtors' counsel has also provided a billing statement, showing approximately 78 hours, including 11.7 hours for research and drafting, 14.3 hours for responding and court hearings, 4.9 hours for correspondence with opposing counsel and discovery, 43 hours for evidentiary hearing preparation and attendance, and 4.1 hours for the Trustee's Motion to Dismiss. The hourly rate for attorney fees is $295.96 on average. The court finds the rate and time charged reasonable.

Debtors also seek $463.73 in costs, for postage and copies ($.15 per page).

However, the person against whom the attorneys' fees award is requested is Bank of America (without identifying which of the many entities with the words "Bank of America" in its name is the intended target of the motion) and the "Bank of NY" (without identify who or what is "Bank of NY"). There is no judgment or order by which the Debtors are the prevailing party, which is necessary to being California Civil Code § 1717 and the contractual provisions into play.

The court has awarded a judgment for the Debtors and against "Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16," as the successor creditor in this case. That is against whom the Debtors must seek to obtain an award of attorneys' fees.

FURTHER HEARING AND AMENDED MOTION

As drafted, the Motion does not request relief which the court may award attorneys' fees. Since this motion was timely filed, the court affords the Debtors and counsel the opportunity to amend this motion to the following on or before August 21, 2013:

a. Seek an award of attorneys' fees against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, which may be enforced as part of the July 9, 2013 Judgment (Dckt. 195).

b. The court makes Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7810 applicable to the present motion, allowing the Debtors to state separate claims (1) for an award of attorneys' fees against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificate holders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, and (2) counsel's motion for allowance of such fees and authorization for them to be paid him as counsel for the Debtors.

c. The amended motion shall have two separate sections for the relief sought. One section shall state with particularity all of the grounds upon which an award of attorneys' fees, as part of the judgment against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, is proper. The second section of the motion shall state with particularity the grounds upon which counsel should be allowed the fees as counsel for the Debtors. The Debtors may have a section with common facts and allegations (such as the history of the litigation), as appropriate.

d. If the Debtors and Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, have stipulated (or for which no objection is to be made) to an amount of attorneys' fees and costs which the bank is to pay, such stipulation or documentation of no opposition by Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-

Through Certificates, Series 2006-OA16, shall be filed with the court.

e. An award of attorneys' fees may include a provision that the fees and costs may be paid directly to counsel for the Debtors by the Bank, that counsel will deposit the monies into his client trust account, counsel will account for the relief of the monies to the Debtors and court (filing a notice of receipt of payment from Bank), and then disburse the monies from the client trust account to counsel.

Additionally any opposition or responsive pleadings (including statements of non-opposition) shall be filed and served on or before August 28, 2013.

AMENDED MOTION

In the Amended Motion, the applicant request the court to award reasonable costs in the amount of $463.73 and attorneys' fees in the amount of $23,085.00 against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, which is to be enforced as part of the July 9, 2013 judgment directly to Wolff & Wolff. The fees will be deposited and disbursed in the manner described below.

The motion has three sections: (1) the first section with common facts and allegations about the history of the litigation (2) the second section states with particularity the grounds upon which counsel should be allowed the fees as counsel for the Debtors and (3) the third and fourth sections regarding the particularity all of the grounds upon which an award of attorneys' fees.

The Creditor, The Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, by and through it's attorney do not oppose the Amended Motion to Request an Award of Attorney Fees and Costs. Dckt. 213.

The award of attorneys' fees includes the provision that the fees and costs may be paid directly to counsel for the Debtors by the Bank, that counsel will deposit the monies into his client trust account, counsel will account for the relief of the monies to the Debtors and court (filing a notice of receipt of payment from Bank), and then disburse the monies from the client trust account to counsel.

Based on the amended motion, the court grants the motion for compensation and allows the following fees and costs:

Applicant's Fees Allowed in the amount of $ $23,085.00
Applicants Expenses Allowed in the amount of $ $463.73.

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

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

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

IT IS ORDERED that Wolff & Wolff is allowed the following fees and expenses to be enforced as part of the July 9, 2013 judgment against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16:

Mark A. Wolff, Attorney at Law
Applicant's Fees Allowed in the amount of $ $23,085.00
Applicants Expenses Allowed in the amount of $ $463.73.

16. 13-29533-E-13 KENNETH SHAW — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK TRUSTEE**
NLE-1 Ronald W. Holland — **8-29-13 [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 29, 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 plan is not the Debtor's best effort. The Trustee states the Debtor is over the median income and is proposing plan payments of $307.00 for 60

months with a 38% dividend to unsecured creditors, which totals $14,446.46. Trustee argues the Debtor has not properly completed the Form B22C, which shows Debtor's disposable income as a negative $92.71. The Trustee objects to deductions on the form based on the $1,663.94 deduction on Line 30 for taxes, where Schedule I shows $1,353.34 for taxes and a higher income for the Debtor of $3,305.25 (versus $1,444.50). The Trustee argues that the disposable income should be at least $217.89.

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

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

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

17. 13-27835-E-13 RWH-3 — JEFFREY/MONICA JACKSON — Ronald W. Holland — MOTION TO VALUE COLLATERAL OF UNITED CONSUMER FINANCIAL SERVICES — 8-20-13 [36]

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 20, 2013. By the court's calculation, 35 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 without prejudice 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 property described as Rainbow Vacuum. The Debtor seeks to value the property at a replacement value of $300.00 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 one 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.

18. 13-27835-E-13 JEFFREY/MONICA JACKSON
RWH-5 Ronald W. Holland
MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
8-20-13 [41]

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 20, 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 1695 Chilton Drive, Roseville, California. The Debtor seeks to value the property at a fair market value of $252,544.00 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 $363,124.93. U.S. Bank, N.A., Trustee's second deed of trust secures a loan with a balance of approximately $74,989.00. 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 U.S. Bank, N.A., Trustee relating to Home Equity Mortgage Truste Series 2007-2, Home Equity Mortgage Pass-Through Certificates, Series 2007-2 secured by a second deed of trust recorded against the real property commonly known as 1695 Chilton Drive, 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 $252,544.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

19. 11-21536-E-13 JT-4 CHRIS/TERESA DAHLBERG John A. Tosney

MOTION TO SET ASIDE DISMISSAL OF CASE
9-6-13 [80]

CASE DISMISSED 9/5/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 6, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Set Aside Dismissal. 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 setting aside the dismissal of their case. Debtors state that the Trustee filed a Motion to Dismiss for failure to make plan payments set pursuant to Local Bankruptcy Rule 9014-1(f)(1). No opposition was filed and the court issued a final ruling dismissing the case.

Debtors state they received the Trustee's Motion to Dismiss and paid the delinquent amount of $330.00, but did not inform their attorney that they cured the delinquency. There was still an outstanding payment, which they made before the hearing on September 1, 2013. Debtors argue they are now fully current with their plan payments and only 7 months or less are all that remain to successfully complete the plan.

DISCUSSION

Local Bankruptcy Rule 9014-1(d)(5) states that each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Movant has failed to provide the legal authority for the court to grant the relief sought.

Federal Rules of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463.

Grounds Asserted by Debtors

Here, counsel does not assert which grounds are applicable under Federal Rule of Civil Procedure 60(b). The grounds stated with particularity (Fed. R. Bank. P. 9013) are as follows:

A. The Chapter 13 Trustee filed a motion to dismiss because the Debtors defaulted on making their required plan payments. No opposition was filed to the motion to dismiss.

B. The Debtors confirmed Chapter 13 Plan required them to make $110.00 a month payments for 36 months.

C. The Trustee's motion stated in bold print that the Debtors were delinquent for 3 payments of $110.00 each, for a total of $330.00 as of July 30, 2013. Further, an additional $110.00 payment would be coming due by August 25, 2013.

D. The court is instructed to read the Debtors' declaration to distill the reasons for the defaults [the Debtors apparently not wanting to state those grounds with particularity in the motion].

E. Upon receiving the Trustee's motion to dismiss, the Debtors paid $330.00 to the Chapter 13 Trustee on August 13, 2013. This payment is reflected on the Trustee's website.

F. The Debtor, while making their payment did not notify their attorney that the payment had been made. The Debtors felt that since they made the payment they did not need to respond to the Trustee's motion or contact their attorney. [Additionally, there are no grounds stated in the Motion that Debtors' counsel did anything upon receiving the Trustee's motion, communicated with his clients, or advised them to contract the attorney as it was necessary to respond to the trustee's motion to dismiss.]

G. The Debtors failed to timely make the $110.00 payment by August 25, 2013, and remained in default under the plan.

H. The Debtor paid the August 25, 2013 $110.00 payment on-line on September 1, 2013. They argue that therefore, as of the September 4, 2013 dismissal hearing they were current [but keeping that information secret from the court and their counsel.].

The court notes that September 1, 2013 was a Sunday and September 2, 2013, was a national holiday when the court was closed and businesses, such as the office of the Chapter 13 Trustee, allow their employees to celebrate the national holiday. The court conducted the hearing on the motion to dismiss at 10:00 a.m. on November 4, 2013. So, in reality, the Debtors state that they sneaked in the payment on a Sunday and then blame the Chapter 13 Trustee for failing to process the payment on Tuesday September 3, 2013, and then failing to represent the Debtors at the 10:00 a.m. September 4, 2013 hearing to argue against the unopposed to motion to dismiss. The court finds these facts to be highly troubling on two counts. First, the conduct of the Debtors does not appear to be in good faith or reasonable. Second, Debtors' counsel apparently has not instructed his clients to contact him in the event of a default, that any motion filed against them must be responded to or addressed by the attorney (unless they want the relief against them granted), and that counsel must fulfill his obligations as a officer of the court in the prosecution of cases he filed.

Further, in their declaration the Debtors state that the actual payment, an electronic funds transfer from their bank to the Chapter 13 Trustee's bank, was not initiated by their bank until September 3, 2013, at some unstated time. It may well be that the transfer was not initiated until after the close of business on September 3, 2013.

I. Finally, the Debtors state that since they are now current on their plan payments and have less then 7 months left on the plan, the court should set aside the order dismissing the case.

J. The Debtors state that if they default in the future, the Trustee can just notify the court of the default and their case can be dismissed.

Motion, Dckt. 80. The Debtors fail to provide the court with a points and authorities providing any legal basis for the relief requested. Rather, they adopt the strategy that they can just vomit allegations on the court and then "deputize" the court to be their attorney's paralegal or associate and provide free legal research and representation to draft the points and authorities. The Debtors are very wrong on this account, causing the court to further question their good faith in this bankruptcy case.

The court notes on the Docket that the Chapter 13 Trustee has placed a "Non-Opposition" docket entry. September 13 docket entry. No pleading has been filed as to why the Trustee has no opposition or why the Trustee believes that failing to respond to motions is appropriate conduct. No representation is made by the Trustee that he has reviewed this situation with counsel for the Debtors and the Trustee believes that extraordinary, confidential circumstances exist for which counsel and the Debtors should be excused for the failure to respond to the motion to dismiss. The Chapter 13 Trustee has left the court casting around in the dark trying to address this situation.

The Declaration filed by the Debtors on September 6, 2013, states under penalty of perjury the following.

A. Chris Dalhberg, one of the Debtors provides the testimony.

B. The Debtors received the motion to dismiss.

C. The Debtors fell behind in their plan payments because he is self-employed, working as a sub-contractor and the City of Rancho Cordova was delinquent in making payments to him.

D. Mr. Dahlberg was not paid for the three months in which the Debtors defaulted in the plan payments. During the time the Debtors defaulted on many other obligations.

E. The Debtors made the $330.00 payment on August 12, 2013. [However, Mr. Dahlberg keeps it a secret as to the source of $330.00 and how he could have the money if he was not being paid by the City of Rancho Cordova.]

F. After making the $300.00 payment on August 12, 2013, the Debtors made the [legal] determination that they did not need to take any further action. [Mr. Dalhberg's declaration appears to carefully avoid any discussion of any interaction with their attorney or actual legal advice they received from their attorney.]

G. Though the Debtors knew they needed to make the August 2013 payment by August 25, 2013, they were delinquent, not making the payment until Sunday September 1, 2013. Further, that it was not until September 3, 2013 [at an unstated time] that the Debtors' bank reports that the electronic funds transfer was actually transmitted to the Chapter 13 Trustee's account.

H. The Debtors do not disclose the source of the $110.00 electronic funds transfer made by their bank on September 3, 2013.

I. Therefore, Mr. Dahlberg testifies, since all defaulted payments have now been made, and they only have 7 months of $110.00 payments left, they request that the court [after providing paralegal services in constructing a points and authorities for them] reinstate the Debtors' case.

Declaration, Dckt. 82.

It is not the role of the court to take sides and provide legal representation for any party. The Debtors offer no legal basis for granting the relief requested. Rather, it appears that they merely ask the court to do what would feel good. Further, the Debtors offer no explanation as to where they found the extra $440.00 to make the payments. Rather, it states that the City merely paid "most of what I was owed." The court has no idea of what constitutes "most of what" is, whether that is $100 or $10,000. Further, the

declaration carefully withholds from the court when the "most of what" payment(s) were made by the City.

Second, if it is true that the City of Rancho Cordova caused the default, counsel could have explained that to the Trustee, which would have likely led to a request to continue the hearing. However, the reason for the default was kept a secret from the Trustee, court, and creditors.

Grounds for Relief

Going through Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9012, the court can quickly dispose of the grounds which are not applicable to the grounds as stated in the motion:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void; and
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.

Federal Rule of Civil Procedure 60(b)(1)-(5). The Debtors state that they intentionally, apparently without seeking direction from their counsel (who is paid by the Debtors to provide such advice) or that counsel attempted to provide them with legal advice, made the legal decision that they did not need to respond to the motion.

That leaves only the grounds under Federal Rule of Civil Procedure 60(b)(6), "any other reason that justifies relief" as a possible basis for granting the relief. But the Debtors chose not to give the court any legal reason why this section could apply. For this section to apply, none of the other provisions must be applicable. Presumably, because the court has disposed of the other five grounds and the Debtors did not assert any other grounds, the Debtors believe that it was so obvious that they did not need to address that issue.

In discussing the appropriateness of granting this relief, Moore's Federal Practice states [emphasis added],

> [b] "Extraordinary Circumstances" Usually Means Lack of Fault by Movant
>
> The main distinction between *Klapprott* and *Ackermann* is that Mr. Klapprott was a victim of circumstances while Mr.

Ackermann was largely at fault for his predicament (see [a], above). The cases seem to make that fault/no fault distinction the controlling factor in determining whether extraordinary circumstances will be found or not. **In a vast majority of the cases finding that extraordinary circumstances do exist so as to justify relief, the movant is completely without fault for his or her predicament;** that is, the movant was almost unable to have taken any steps that would have resulted in preventing the judgment from which relief is sought. For example:

• There should be relief from judgments that were taken **without any real knowledge of the proceedings by the movant.** A judgment against one of several co-defendants who allegedly signed a loan agreement was set aside on the motion of his estate when it was shown that (1) the moving co-defendant never knew of the underlying loan agreement because the loan was for a corporation and his name was signed by another person without his knowledge, (2) after the lawsuit was filed, a single answer was filed on behalf of all defendants, even though the attorney filing the answer had no authority to represent the moving co-defendant, (3) the attorney who had filed the unauthorized answer simply stopped representing the moving co-defendant and this led to a summary judgment based on deemed admissions, and (4) the moving co-defendant had died before these facts were brought to his attention.

• Bankruptcy trustee not at fault for order procured by fraud of counsel for creditor years earlier. A certificate of indebtedness that was wrongfully issued by the Bankruptcy court to a creditor, without consideration or cause, was properly vacated under Rule 60(b)(6) because: (1) the certificate had not been applied for; (2) **there had been no hearing on the merits of its issuance; and (3) counsel for one creditor had simply inserted the provision into its proposed order on another matter.**

• Relief from a stipulated dismissal is appropriate if the **stipulation was procured by fraudulent means that deprived a litigant of a fair hearing.** A prisoner who was talked into dismissing his habeas corpus petitions would be relieved of those judgments of dismissal if he could prove his allegations that the dismissals were secured by promises that were made to him by government attorneys who had no intention of keeping them.

• Relief from a supposedly voluntary dismissal on the merits was proper when **the dismissal was, in fact, mandated by the movant's precarious health.** Relief was granted from what was nominally a voluntary dismissal of securities litigation between California residents and a Washington, D.C. broker. The plaintiffs made the second of two voluntary dismissals after the case was transferred from California to the District of Columbia and, in moving to set aside the second dismissal,

the plaintiffs made well-documented claims that the plaintiff's **precarious psychological health** and financial losses absolutely precluded participation in cross-country litigation.

• Relief from a dismissal for lack of subject-matter jurisdiction was appropriate when a failure to grant relief would have effectively prevented any adjudication of the plaintiff's claims. Co-plaintiffs initially asserted admiralty jurisdiction. After the complaint was dismissed for lack of subject-matter jurisdiction, plaintiff A moved to vacate the judgment of dismissal; to drop plaintiff B from the lawsuit as a nondiverse, dispensable party; and to reinstate the action on the basis of diversity of citizenship. At the time the initial complaint was filed, plaintiff A was a citizen of Canada, residing temporarily in New York, and thus was diverse from the defendants, who were citizens of New York. At the time of her motion to reinstate the action, however, plaintiff A had become a legal permanent resident of New York and thus was no longer diverse from the defendants. Because an amendment to allege diversity jurisdiction relates back to the time the complaint was first filed, plaintiff A's citizenship would be assessed as of that time. Accordingly, the fact that the plaintiff had become a New York citizen did not destroy diversity. The circuit held that plaintiff A was entitled to relief from the dismissal. Until the question of admiralty jurisdiction was resolved, it was reasonable and in the interest of judicial economy for plaintiffs A and B to proceed together with their related claims. Plaintiff A eliminated the non-diverse party only when it became essential to jurisdiction and by then she would be without a remedy if relief were not granted, since the statute of limitations would bar a state-court action, and a new federal action could not be commenced because diversity no longer existed.

• **Relief from a judgment in favor of a plaintiff is appropriate when the defendant tries to impose conditions on its compliance with the judgment**. In one case, the plaintiff, a civilian employee of the Department of Defense, had been involuntarily separated from service. Under the then-effective version of 5 U.S.C. § 3329, the plaintiff sought reappointment but was not offered a position within the statutory time limit. The plaintiff then filed suit, and the district court entered a judgment requiring the Secretary of Defense to change the effective date of the plaintiff's competitive service appointment to a specified date. The Secretary informed the plaintiff that the appointment would be limited to a four-year term and that to accept the appointment, the plaintiff would have to return a $25,000 early-retirement incentive that he had received at the time of his earlier separation from service. The plaintiff sought relief under Rule 60(b)(6), and the district court granted relief in the form of a clarification of the judgment, ordering that the Secretary offer the plaintiff a permanent, non-term

appointment, and that the Secretary not condition the appointment on repayment of the early-retirement incentive. The **District of Columbia Circuit affirmed, finding that the Secretary's attempt to place conditions on its compliance with the original judgment was an extraordinary circumstance justifying Rule 60(b)(6) relief.** The court of appeals explained that "[i]f a plaintiff receives a judgment, the liable party cannot normally attach conditions to its fulfillment of the judgment; otherwise, parties could willfully flout a court's legitimate authority."

[c] Fault by Movant Usually Means Lack of "Extraordinary Circumstances"

Cases in which relief is denied usually find a lack of "extraordinary circumstances" justifying relief by pointing to some misconduct or culpable conduct of the moving party, or a litigation choice made by that party. For example, one plaintiff's actions based on an automobile accident occurring in the West African country of Guinea were dismissed on forum non conveniens grounds. After two years of futile attempts to litigate the case in Guinea, the plaintiff moved to have her federal court case reopened under Rule 60(b)(6). Relief was denied because the futility of her attempts to litigate in Guinea were her own fault. She and her attorneys ignored consistent advice that it was necessary to go to Guinea and hire local counsel. Many other cases illustrate this principle, and describe typical forms of fault by the moving party that preclude relief, including the following:

- Failure to move for relief in prompt manner precludes finding of extraordinary circumstances. The Bolivian Air Force was not entitled to relief from a default judgment for a number of reasons. The principal ground asserted in the motion was "fraud on the court" (see § 60.21[4]), but the court ruled that the Air Force's claim was merely a time-barred claim for fraud by an adverse party (see § 60.43). There were no "extraordinary circumstances" because, although the Air Force did not know of the default judgment for years, it sat on its hands once it did learn of the judgment. It did not move for relief for over a year after learning of the judgment.

- **Ignorance of the law is not extraordinary circumstances.** One litigant's second suit on a claim was barred by *res judicata* because of the litigant's voluntary dismissal of an earlier action on a related claim and because the voluntary dismissal of this related litigation was on the merits. Under these circumstances, the litigant was not entitled to relief either from the voluntary dismissal of the first action or from the court-ordered dismissal of the second suit. Although the district court purported to issue an order amending the earlier dismissal, it was not valid under Rule 60(b)(6) because, in asking for this order granting relief,

the litigant offered proof of no extraordinary circumstances other than the failure to realize the legal significance of that first dismissal before trying to commence the second action. The litigant's ignorance of basic principles of law wasted the court's and the opponent's time and money with a meritless second action.

• A party who violates court rules or orders is not entitled to relief from the resulting judgment. A party that repeatedly violated its discovery obligations and court orders, that was given numerous opportunities to correct its errors, and that suffered an adverse judgment only after months of fruitless effort by the court to obtain cooperation was not in a position to obtain relief under Rule 60(b)(6).

• Failure to take advantage of an opportunity to litigate an issue precludes use of that issue to secure Rule 60(b) relief. A judgment creditor of a bankrupt wanted to set aside a bankruptcy discharge on the grounds that the discharge was procured by fraud. The creditor had strong evidence to back up her claim, but she was denied relief because she offered no explanation of her failure to take advantage of her ability to object to the discharge in the bankruptcy case before the discharge was issued.

• **Dilatory conduct in failing to promptly appeal adverse judgments does not justify Rule 60(b) relief.** One civil RICO defendant was denied relief from a consent judgment even though he contended that the consent judgment was entered into by a co-defendant's attorney that had no authority to represent him, let alone consent to an adverse judgment in his name. The record showed, however, that the moving defendant had knowledge of this adverse consent judgment within the time for appeal, and the motion set forth no reason why an appeal was not taken raising these concerns.

• **A party who did not act diligently to protect his or her own interests ordinarily is not entitled to relief under Rule 60(b)(6).** In one case, the plaintiffs voluntarily dismissed their suit in reliance on an alleged agreement with opposing counsel that settlement negotiations would resume when one plaintiff's medical condition stabilized. After expiration of the limitations period, negotiations with the defendant's new counsel stalled and settlement never came about. The district court properly denied the plaintiffs' subsequent motion for relief under Rule 60(b)(6), because the plaintiffs had not acted diligently to protect their interests. The parties' agreement incorporated no promises with respect to the tolling of the statute of limitations, with respect to conditions of any future litigation, or even with respect to the certainty of reaching a settlement on the merits.

Moore’s Federal Practice - Civil, Vol 12, § 60.48[b], [c].

Quite possibly the Debtors are seeking relief from the default entered against them on the motion to dismiss. "Therefore, the defaults of the respondent and other parties in interest are entered." Civil Minutes, Dckt. 76, for Trustee's motion to dismiss. Fed. R. Civ. P. 55; Fed. R. Bankr. P. 9055, 9014. However, the Debtors have not requested that their default be vacated. Possibly, the Debtors are implicitly requesting that the default be vacated, as well as the order dismissing the case, again "deputizing" the court to serve as the paralegal for their attorney.

In light of the circumstances, the court will consider the merits of the Motion, notwithstanding the failures of the Debtors. In *Community Dental Services v. Tani*, 282 F.3d 1164, 1169-1170 (9th Cir. 2002),

> Under Federal Rule of Civil Procedure 60(b)(6), a default judgment may be set aside when there is any reason not previously considered in the Rule that justifies granting relief. FN.8 We have held that a party merits relief under Rule 60(b)(6) if he demonstrates "extraordinary circumstances which prevented or rendered him unable to prosecute [his case]." *Martella v. Marine Cooks & Stewards Union*, 448 F.2d 729, 730 (9th Cir. 1971) (per curiam); see also *Pioneer Investment Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (1993). The party must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with the prosecution or defense of the action in a proper fashion. *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993).
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> FN.8. Clause 60(b)(6) is a "catch-all" clause that is read as being exclusive of the other grounds for relief listed in Rule 60. *Lafarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1338 (9th Cir. 1986).
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> ...
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> Under this circuit's precedent, a client is ordinarily chargeable with his counsel's negligent acts. Clients are "considered to have notice of all facts known to their lawyer-agent." *Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141-42 (9th Cir. 1989). Because the client is presumed to have voluntarily chosen the lawyer as his representative and agent, he ordinarily cannot later avoid accountability for negligent acts or omissions of his counsel. Link v. Wabash R.R. Co., 370 U.S. 626, 633-34, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962); [**9] see also Pioneer, 507 U.S. at 396-97. While the above principles provide the general rule regarding the client-attorney relationship, several circuits have distinguished a client's accountability for his counsel's neglectful or negligent acts - too often a normal part of representation - and his responsibility for the more unusual circumstance of his attorney's extreme negligence or egregious conduct.
>
> ...

> We join the Third, Sixth, and Federal Circuits in holding that where the client has demonstrated gross negligence on the part of his counsel, a default judgment against the client may be set aside pursuant to Rule 60(b)(6). 10 Our holding is consistent with the well-established policy considerations that we have recognized as underlying default judgments and Rule 60(b). First, the rule is remedial in nature and thus must be liberally applied. See *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (per *curiam*). Second, judgment by default is an extreme measure and a case should, "whenever possible, be decided on the merits." *Id.* Additionally, our holding makes common sense, as is evident from the facts in the case before us. When an attorney is grossly negligent, as counsel was here, the judicial system loses credibility as well as the appearance of fairness, if the result is that an innocent party is forced to suffer drastic consequences.

A review of the docket shows that the Notice of Default was clear in its directions to Debtors regarding their case. The Debtor knew that payments had to be made to the Trustee, made the payments, but failed to set an opposed hearing, or otherwise contact their attorney or the Chapter 13 Trustee. Further, the Debtors knew that there was a motion to dismiss pending, but made the deliberate decision not to file a responsive pleading or appear before the court to address the issues relating to the City of Rancho Cordova not paying the monies due the Debtors. There is no evidence of mistake in the prior order dismissing the case. The Debtor elected not to respond, ignoring the motion of the Chapter 13 Trustee.

The court has to consider why debtors, represented by knowledgeable, experienced counsel, would not respond. First, they could have chosen to ignore counsels advice, fearing they would have to pay fair value for the legal services provided. Second, they may have decided that they knew more than the attorney, and their legal strategy was better than responding as required by third. Third, their attorney could have told them to ignore the motion and just try and get the money paid before the hearing – and then all would be good because the "court never grants the motions to dismiss debtors' Chapter 13 cases." FN.1. Fourth, counsel ignored the motion, did not communicate with his clients to advise them that they needed to respond to the motion and communicate any extraordinary circumstances (such as the City of Rancho Cordova failing to pay the Debtors) to the Chapter 13 Trustee.

FN.1. The court cannot believe that this is the possible situation in that the Debtors very knowledgeable, experienced counsel knows that for more than three years this court has granted motions to dismiss for which the parties did not file an opposition or other response which warranted the motion not be granted.

If the court does not vacate the dismissal, the Debtors will be forced to file a new bankruptcy case and provide for at least another 36 months of payments. While the bankruptcy laws provide for extraordinary relief for debtors, in a Chapter 13 case debtors also commit to timely performing their plan and in good faith prosecuting their Chapter 13 case. Ignoring motions and

there not being communications between debtors and their counsel are not indices of good faith.

The court can interpret the limited evidence one of two ways. The first way is that the Debtors, with full knowledge of the motion and the assistance of legal counsel, elected to not respond to the motion and have their default taken. The evidence strongly suggests this is what occurred. If the court so concludes, then vacating the order would be improper. The parties live, and their cases die, by such decisions.

Alternatively, the court could stretch the facts to conclude that there was a catastrophic failure of legal counsel in this case. That notwithstanding having received the notice of dismissal, counsel failed to advise the Debtors of the terrible consequences of not responding to the motion, ignored the City of Rancho Cordova causing the default by withholding payments due the Debtors, and then left the Debtors casting about. The Chapter 13 Trustee mute non-opposition and not at least requesting reimbursement for the legal fees and expenses could well be indicative of such a situation.

On the totality of the circumstances, the court concludes that some extraordinary grounds exist (which are, or any reference thereto, are hidden from the court by the parties) for which relief pursuant to Rule 60(b)(6) are warranted. However, this does not end consideration by the court of the Debtors' failure to respond to the motion to dismiss and now having to come back with further, otherwise unnecessary proceedings.

NECESSARY SANCTIONS

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contemp power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situation.

A bankruptcy court is also empower to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel

future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

For more than three years this court has made it clear that it is necessary for parties to respond to motions when written opposition is required (L.B.R. 9014-1(f)(1)) – not merely waltz into court the day of the hearing and start explaining why relief should not be granted or, as in this case, ignore the hearing and wait until relief is granted and some later date seek relief from the order which the party and counsel intentionally allowed to be entered through inaction. Nothing has been presented to the court that the failure to respond by the Debtors and counsel was inadvertent – such as illness, misfiling of motion, lost documents, or confusion due to press of business. No testimony has been provided as to counsel having attempting to address the issue with his clients, but the Debtors being paralyzed due to fear. Here, if the facts as now testified to are true, their was a simple explanation for which additional time most likely would have been granted.

The court cannot, and will not, allow parties and attorneys slip back into what was a common practice in this district, ignore motions to value and create significant unnecessary work for Chapter 13 Trustee, U.S. Trustee, creditors, and the court. Though it has now become rare, the court has conditioned vacating dismissal orders on the debtor or debtor's counsel reimbursing the Chapter 13 Trustee for the unnecessary legal fees and expenses in connection with the motion to dismiss hearing and the motion to vacate. Commonly this runs around $1,000.00. The Chapter 13 Trustee has chosen not to request the recovery of those expenses in this case.

The Chapter 13 Trustee's election does not render the court impotent in addressing the Debtors and counsel ignoring the motion and not properly responding. If some testimony had been provided as to counsel's attempt to address the issue for his clients, even the thinnest reed of an explanation, the court would be comfortable that this non-response is not a sign of more non-response to come. (Not just from this counsel, but other counsel in the District.)

For a corrective sanction, the court order's Debtors' counsel to pay the sum of $150.00 to the Clerk of the Bankruptcy Court on or before October 15, 2013.

Based on the foregoing, the court grants the motion to set aside dismissal.

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

IT IS ORDERED that the Motion is granted and the order of the court dismissing the case filed on September 5, 2013, Dckt. 78, is vacated.

IT IS FURTHER ORDERED that John Tosney, counsel for the Debtors, shall pay $150.00 in corrective sanctions to the Clerk of the Bankruptcy Court on or before October 15, 2013.

20. 12-38939-E-13 TIFFANIE CRAVER — MOTION TO MODIFY PLAN
TJW-1 Timothy J. Walsh — 8-1-13 [20]

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 August 1, 2013. By the court's calculation, 54 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 grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the basis that the Debtor is proposing plan payments that overlap. The plan lists payments as $647.00 per month for the first eight months of the plan, then beginning June 2013, debtor will pay $500 per month for the balance of the plan, 52 months. The Trustee states the 8th month is June 2013 and a payment of $650.00 was posted on June 25, 2013.

The Trustee states he would have no objection if the order confirming plan stated that the Debtor will pay $500 per month for the remainder of the plan beginning on July 25, 2013.

Based upon the proposed amendment, which shall be stated in the order confirming the Plan, the modified Plan does comply 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 Amended Chapter 13 Plan filed on July 29, 2013, as amended at the hearing, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. 10-35742-E-13 RICHARD/ADRIENNE SILVA
MET-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF JPMORGAN CHASE BANK, N.A., CLAIM NUMBER 14
8-10-13 [35]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 10, 2013. By the court's calculation, 45 days' notice was provided. 44 days' notice is required.

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

The Objection to Proof of Claim number 14 of JPMorgan Chase Bank, N.A. is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 14 on the court's official claims registry, asserts $102,958.23 claim. The Debtor objects to the Proof of Claim on the basis that it was not timely filed. *See* Fed. R. Bankr. P. 3002(c).

The Chapter 13 Trustee filed a statement of non-opposition to the objection, provided he does not have to retrieve the funds previously disbursed in the amount of $1,160.81. Dckt. 39.

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

The deadline for filing a Proof of Claim in this matter was October 27, 2010. The creditor's claim was filed April 1, 2013.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of JPMorgan Chase Bank, N.A. 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 14 of JPMorgan Chase Bank, N.A. is sustained and the claim is disallowed in its entirety.

22. 12-33944-E-13 SLH-2 | **PHILIP/JENNIFER HOLLENBACH** | **MOTION TO MODIFY PLAN** | **8-13-13 [60]**
Seth L. Hanson

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 August 13, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the motion on the basis that Debtors are

proposing to modify their plan due to a decrease in household income, but Debtors have failed to mention when the co-debtor started working on a second job. Further, the Trustee states that Debtors have completed 13 of 60 months and he is uncertain if the co-debtor will return to working two jobs during the remainder of the plan. The Trustee is requesting a copy of the 2012 tax return, a copy of the returns for every year remaining in the plan to verify and confirm the Debtors circumstances have not changed.

On September 19, 2013, the Debtors filed a supplemental declaration addressing this significant change in income. Jennifer Hollenbach testifies that July 25, 2013, was her last day working the second job, and that she has no intention to return to that or other employment for a second job during the remaining years of the 60 month plan. Further, that the Debtors will provide the Chapter 13 Trustee with copies of their annual tax returns.

In addition to providing tax returns, the court also orders the Debtors to provide the Chapter 13 Trustee with any changes of employment or increases of income of more than 10% from the income upon which confirmation of the modified plan is based, within 60 days of such increase in income.

Projected Disposable Income Computation

The Objection filed by the Chapter 13 Trustee raises the issue of how the court properly computes the Projected Disposable Income in this case. The Chapter 13 Plan provides for a 7.00% dividend for creditors holding general unsecured claims.

Exhibit B filed by the Debtors is their current income and expense statement upon which the present modified plan is based. Dckt. 63. This information is summarized by the court as follows.

INCOME

	Debtor/Insurance Business	Co-Debtor/Nurse
Gross Income	$9,515.22	$5,917.69
Payroll and Social Security Taxes	($3,137.00)	($1,460.72)
Insurance	$0.00	($36.78)
401K Loan Repayment	($736.72)	
401K Contribution	$397.17	
AFLAC	($45.00)	
CA Disability	($76.23)	
CASDI	$0.00	($58.85)
403B	$0.00	($1,186.60)

Stated Combined Monthly Net Income	$5,141.10	$3,174.74

The First Amended Schedule B, Dckt. 36, discloses that the personal property assets of the Debtors include the following:

401(a) Held With Catholic Healthcare West	$12,133.25
401k Held With One America	$135,671.18
403(b) Held With Catholic Healthcare West	$119,350.73

EXPENSES

The current expenses, Exhibit B, are stated to be as follows:

Total Average Monthly Expenses	($7,993.89)
The Expenses Include	
Mortgage, Taxes, Insurance	$3,115.67
Food	($1,000.00)
Laundry/Dry Cleaning	($250.00)
Transportation	($800.00)
Recreation	($199.22)
Life Insurance	($303.00)
Child Care	($600.00)

The proposed Modified Chapter 13 Plan decreases the dividend for general unsecured claims from 56% (confirmed plan, Dckt. 5) to 7.00% under the proposed Modified Plan. Under the existing confirmed Plan, the Debtor's monthly plan payments increase by $736.72 in March 2015, when the 401k loan is repaid. Confirmation Order, Dckt. 44.

Under the Proposed Modified Plan, the Debtors require the following plan payments,

Through July 2013.....$58,145 total payments

Months 13 Through 60.....$671.95 a month

Without regard to the expenses and deductions, the proposes payments ignore that the 401k loan will be repaid in March 2015 (the Debtors paying

themselves back for the loan to themselves) and that the Debtors' projected disposable income will increase by $736.72 a month.

The proposed Modified Chapter 13 Plan requires the following necessary payments to creditors.

Class 1 Secured	$0.00
Class 2 Secured - Plan Payment	
Bank of America, N.A. 2011 BMW 528i	($500.00)
Class 4 Secured - Direct Payment	
GMAC Mortgage	($3,115.67)
Class 5 Unsecured Priority	
Internal Revenue Service	($302.62)
Class 7 General Unsecured 7% on $119,554.89 in Claims	($139.48)

In addition to ignoring the $736.72 increase in projected disposable income in March 2015, the Debtors also elect to withhold $1,186.60 from the projected disposable income computation for a voluntary 403B contribution and a voluntary $379.17 401k contribution. When the Debtors were making a 55%+ dividend to creditors holding general unsecured claims, possibly retaining $1,565.77 of income ($93,946.20 over the 60 months of the plan) could have been considered reasonable. However, in light of the Chapter 13 Trustee's objection, it is not now reasonable or in good faith.

Further, the Debtors repaying themselves the 401k loan comes to an end, with the $736.72 payment no longer being required. The Debtors appear to have ignored this in presenting the court with the proposed Modified Plan. The court finds it difficult to believe that they and their counsel merely "forgot" that the Debtors would be done with the payment by March 2015. Rather, it appears to have been a deliberate omission to mislead the Chapter 13 Trustee, U.S. Trustee, Creditors, and the court.

This misrepresentation to the court, creditors, Chapter 13 Trustee, and U.S. Trustee raises significant issues for the Debtors. The federal judicial process is not one in which parties can lie, cheat, steal, ignore the rules, and engage in bad faith conduct, for which the only consequence is "oh, you caught me, now I will do it right." This conduct may have so tainted the Debtors' good faith in this case that they can never confirm a modified plan. Further, such conduct may not only result in a dismissal of the bankruptcy case, but a dismissal with prejudice (which results in the Debtors not being able to discharge any of the debts included in this case in any subsequent bankruptcy case).

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.

23. 13-27044-E-13 KEVIN/BREE SEARS — MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs — 7-22-13 [22]

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 Debtors' 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.

24. 13-30248-E-13 DARRIN/CARMEL HILL **MOTION TO EMPLOY PAUL GLUSMAN**
SDB-1 W. Scott de Bie **AS SPECIAL COUNSEL**
8-27-13 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Debtors seek to employ counsel Paul Glusman of Law Offices of Paul Glusman, to assist Debtor Carmel Hill in her claim for wrongful termination against her former employer, Fred Finch Youth Center, A California Corporation. Mr. Glusman filed a formal action on behalf of Debtor prior to filing the petition and the action is pending before the Alameda County Superior Court, Case No. R612659010. Debtor wishes to continue to have Mr. Glusman represent her in this action.

Mr. Glusman testifies he, his firm, or other counsel do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

DISCUSSION

Local Bankruptcy Rule 9014-1(d)(5) states that each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Movant has failed to provide the legal authority for the court to grant the relief sought.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in

possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Paul Glusman as counsel for the Debtor with the 33 1/3% of the net recovery prior to trial and 40% if resolved after a trial is set. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by the Chapter 7 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 Employ is granted and the Debtor is authorized to employ Paul Glusman as counsel for the Debtor.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

25. 13-24250-E-13 RSG-3 | **MATTHEW/CLARA SWIFT** | **Robert S. Gimblin** | **MOTION TO VALUE COLLATERAL OF IRWIN HOME EQUITY 8-22-13 [30]**

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was not correctly 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 without prejudice 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 Irwin Home Equity Corporation. However, service by first class mail upon a corporation requires mailing a copy of the summons and complaint to the attention of "an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). Here, the Proof of service failed to provide service to the attention of an officer, managing or general agent or any other agent. Dckt. 33. Therefore, the motion to value collateral is denied without prejudice. FN.1.

FN.1. This court's interpretation of the rule requires that at least it must clearly be addressed to at least "Attn: Officer, manager, agent for service of process" or the like. Merely sending it to "IRWIN HOME EQUITY CORPORATION, 125 Third Street, Columbus, In 47201" is not sufficient. In reviewing the California Secretary of State website, it reports that this corporation has been suspended. http://kepler.sos.ca.gov/. It also lists the address for this

entity to be 500 Washington Street in Columbus, Indiana. However, the Indiana Secretary of State lists the 125 Third Street address for Irwin Home Equity Corporation. https://secure.in.gov/sos/online_corps/view_details.aspx?guid=DFED8FE3-2B87-4C6C-8B9E-83F32291322C.

In light of the serious consequences for not properly serving a party and the possibility of the court issuing an ineffective order, there is little reason for a party not to clearly comply with the service requirements. Correspondingly, there is little reason for the court to turn a blind eye to potentially defective service.

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.

26. 13-27151-E-13 FRANK TERRAZAS
SJJ-3 Stephen J. Johnson

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
8-9-13 [36]

APPEARANCE OF STEPHEN J. JOHNSON, PERSONALLY COUNSEL FOR DEBTOR REQUIRED FOR SEPTEMBER 24, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

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 Frank Terrazas, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to value the collateral of "US Bank National Association, as Indenture Trustee GMACM Home Equity Loan Trust 2007-HE1." However, U.S. Bank National Association, as Indenture Trustee GMACM Home Equity Loan Trust 2007-HE1 was not served properly. Debtor served "GMAC Mortgage LLC, dba Ditech.com," Specialized Loan Services, LLC, and Specialized Loan Servicing (both at the same address). It appears that the Debtor only served the servicing agency of the entity "US Bank National Association, as Indenture Trustee GMACM Home Equity Loan Trust 2007-HE1." This is not sufficient.

U.S. Bank, N.A. is a federally insured financial institution for which service must be made as required by Federal Rule of Bankruptcy Procedure 7004(h). It mystifies the court how an attorney, who regularly has appeared in this court, would fail to serve the party who is the subject of the motion.

Loan servicing companies are not the agents for service of process, as they have repeatedly told 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 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.

27. 13-27151-E-13 SJJ-2 **FRANK TERRAZAS** **Stephen J. Johnson** **CONTINUED MOTION TO CONFIRM PLAN** **7-12-13 [25]**

CONT. FROM 8-27-13

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, 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 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 motion depends on a Motion to Value Collateral which is set for hearing September 24, 2013.

The Debtor responded, requesting that the motion be continued to be heard with the pending Motion to Value Collateral on September 24, 2013.

CONTINUANCE

The court continued the hearing on the Motion to Confirm the Amended Plan to be heard with the pending Motion to Value Collateral. The court has denied the Motion to Value due to defective service of process.

The Motion to Value Collateral having been denied, the Motion to Confirm Amended Plan is also 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 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.

28. 10-45652-E-13 MARIO/RAFAELA GONZALEZ — CONTINUED MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso — 8-6-13 [135]

CONT. FROM 9-10-13

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 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 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 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 debtors' 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 benefits 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.

CONTINUANCE

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

The parties have not provided supplemental responses regarding the status of the case. Based on evidence before the court, Debtors have not properly

explained the status of unemployment. 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 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 to Confirm the Plan is denied without prejudice.

29. 12-39152-E-13 SHEILA/SCOTT EDWARDS — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
RI-3 Rebecca E. Ihejirika — 8-19-13 [139]

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 19, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion 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 9828 Nestling Circle, Elk Grove, California. The Debtor seeks to value the property at a fair market value of $229,300.00 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 $432,703.24. Bank of America National Association's second deed of trust secures a loan with a balance of approximately $103,923.00. 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 9828 Nestling Circle, Elk Grove, 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 $229,300.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

30. 13-29155-E-13 LBG-1 JERRY DESCHLER AND SALLY HUI-DESCHLER — MOTION TO VALUE COLLATERAL OF PMAC LENDING SERVICES 8-15-13 [15]

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 15, 2013. By the court's calculation, 40 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 xx on [Date], 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issue 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:

The Debtor is the owner of the subject real property commonly known as 2971 Great Egret Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $221,000.00 as of the petition filing date. Neither the motion nor the declaration by Debtors, Jerry James Deschler, Jr. and Sally Yukyu Hui-Deschler provide the exact and complete address of the subject rental property. It states that "rental property is located in Sacramento, California on Great Egret Way." The unit or house number is not included. The court obtained the rental property address from the Creditor's opposition.

Creditor's Opposition

PMAC Lending Services, Inc. filed a written opposition opposing Debtor's valuation of the subject property is $221,000.00. Creditor intends to file its Proof of Claim and obtain an expert valuation of the subject property. Creditor requests additional time and continue the hearing to allow it to obtain its own valuation of the property.

Based on the foregoing, the court continues the hearing to allow the Creditor to obtain an appraisal of the subject real property.

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 hearing on the Motion has been continued to xx on [Date], 2013, to provide for discovery in this Contested Matter.

IT IS FURTHER ORDERED that on or before xx on [Date], 2013, PMAC Lending Services, Inc. shall file its substantive objection and evidence (declaration and appraisal if appropriate).

31. 10-31659-E-13 DONALD/THERESA SCHNEIDER — MOTION TO MODIFY PLAN
DPR-4 David P. Ritzinger — 8-15-13 [63]

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 August 15, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtors are unable to make the plan payments. Debtors report current net income of $8,570.87 in their Declaration but their most recent statement of expenditures reports average monthly expenses of $6,737.02, which leaves $1,833.85 remaining for plan payments. The proposed plan states the plan payment is to be $2,067.96.

Additionally, the Trustee states the creditor PRA Receivables Management, LLC is not provided for in the proposed plan. Trustee states that

this creditor is in the confirmed plan as a Class 2 creditor with a monthly dividend of $275.20 at an interest rate of 5%. The Trustee has paid this creditor's claim in full.

AMENDED SCHEDULES

This bankruptcy case was filed on May 3, 2010. The Debtors filed Schedules I and J on May 14, 2010, stating their Average Monthly Income and Expenses as of the commencement of the case to be $9,300.40 and ($6,737.02). Dckt. 13.

On September 18, 2013, the Debtors have now filed Amended Schedule I and Amended Schedule J to correct errors into what they previously stated under penalty of perjury to be their Average Monthly Income and Expenses. Dckt. 71. More than three years after their original statements under penalty of perjury, the Debtors now state under penalty of perjury that their Current Monthly Income was only $11,282.56 and their Expenses were actually ($9,214.49). No explanation is given as to how the Debtors could have been so grossly wrong in their statements under penalty of perjury or why the court should believe their current statements under penalty of perjury.

The Debtors obtained confirmation of a plan in this case based upon false financial information. Order Confirming Plan, Dckt. 46. FN.1.

FN.1. The court notes that the Debtors' Declaration, Dckt. 65, discusses post-petition changes in income and expenses. However, such post-petition changes are not reflected in Schedules I and J, which state the income and expenses as of the commencement of the case.

Schedule I Form:

> "INCOME: (Estimate of average or projected monthly income at time case filed)"

11 U.S.C. § 101(10A) [Emphasis Added],

> (10A) The term "current monthly income"--
>
> (A) means the **average monthly income** from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on–
>
> (i) **the last day of the calendar month immediately preceding the date of the commencement of the case** if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
>
> (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

Schedule J Form:

"Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22 A or 22C."

11 U.S.C. § 521(1)(B)(ii), (v), (vi),

(1) file–

(B) unless the court orders otherwise--
...
(ii) a schedule of current income and **current expenditures**;
...
(v) a statement of the **amount of monthly net income**, **itemized to show how the amount is calculated**; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the **12-month period following the date of the filing of the petition**;

If the Debtors intended to advise the court of post-petition changes in income and expenses, they would have done so through their declaration and updated, accurate income and expense statements as of the motion, not amending information which is over three years old.

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.

32. 13-29759-E-13 NLE-1 JEFFREY/NANCY CARDINAL Robert J. Busch — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK TRUSTEE 8-29-13 [28]

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 29, 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 plan is not the Debtors' best effort. Trustee states the Debtors are over the median income and propose plan payments of $254.00 per month for 60 months, with a 0% dividend to the unsecured creditors.

Trustee argues that Debtor has not reported all income as Debtors reported federal and state tax refunds for 2011 and 2012. The Debtor's received $8,205.00 and $4,408.00 respectively. However, no tax refund is projected on Schedule I.

Additionally, the Trustee states that Schedule J does not make clear what duration of time certain expenses will be or are being paid by the Debtors for their medical and dental costs and the $500.00 tuition expense for their daughter.

The court also notes that the Motion to Value Collateral of Patelco Credit Union was continued in order for Creditor to obtain an appraisal on the subject real property.

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

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

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

33. 08-28960-E-13 BLC-5 — JEFFREY/VICTORIA MCCOY — Brian L. Coggins — OBJECTION TO CLAIM OF COMMERCIAL TRADE, INC., CLAIM NUMBER 2 — 8-6-13 [86]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 49 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 2 of Commercial Trade, Inc. 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 Proof of Claim Number 2 on the court's official claims registry, asserts $2,354.24 priority claim. The Debtor objects to the Proof of Claim on the basis that the claim is not a priority classification.

However, Debtor did not properly serve Commercial Trade, Inc., as Debtor served "Commercial Trade Bureau of California" at a P.O. box. This address is not either of the addresses provided on the California Secretary of State's website for the entity named "Commercial Trade, Inc." 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."). FN.1.

FN.1. Information concerning Commercial Trade, Inc. and its street address is stated by the California Secretary of State on her website, http://kepler.sos.ca.gov/, as follows,

> Entity Name: COMMERCIAL TRADE, INC.
> Entity Number: C0814149
> Date Filed: 04/11/1977
> Status: ACTIVE
> Jurisdiction: CALIFORNIA
> Entity Address: 5330 OFFICE CENTER CT, SUITE C
> Entity City, State, Zip: BAKERSFIELD CA 93309
> Agent for Service of Process: HAL BRADFORD ENNIS
> Agent Address: 5330 OFFICE CENTER CT, SUITE C
> Agent City, State, Zip: BAKERSFIELD CA 93309

Based on defective service, the objection is overruled 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 Objection to Claim of Commercial Trade, Inc. filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 2 of Commercial Trade, Inc. is overruled without prejudice.

34. 13-27661-E-13 KENNETH/ELSA BARNES MOTION TO CONFIRM PLAN
ALF-1 Ashley R. Amerio 8-13-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2013. By the court's calculation, 42 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 August 13, 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.

35. 13-25662-E-13 ROBERT/CLAIRE BEAUCHAMP MOTION TO CONFIRM PLAN
JAT-2 John A. Tosney 8-12-13 [33]

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, 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. 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 August 12, 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.

36. 13-28763-E-13 NADINE ADKINS — MOTION TO CONFIRM PLAN
SJS-1 Scott J. Sagaria — 8-7-13 [19]

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 August 7, 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:

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 $515.00 delinquent in plan payments, which represents one 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.

37. 08-32665-E-13 ROBERT/GINA SMITH — MOTION TO INCUR DEBT
SAC-6 Scott A. CoBen — 8-26-13 [76]

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, and Office of the United States Trustee on August 26, 2012. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final 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 Motion to Incur Debt is granted. No appearance required.

The motion seeks permission to purchase the real property commonly known as 5494 Mossy Stone Way, Rancho Cordova, California, which the total purchase price is $325,395.00, with monthly payments of $1,624.65 a month. The interest rate is 4.3750 % per annum and the lender is Universal American Mortgage Company of California. Debtors state they have made the final plan payment on August 25, 2013.

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 Trustee filed a response stating that Debtors have made the last plan payment on their plan and accepts the reply that the closing costs of $5,900.00 will be paid from the Debtor's 401K.

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 79. The plan having been completed, 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 Motion is granted and Debtors Robert and Gina Smith are authorized to purchase the real property commonly known as 5494 Mossy Stone Way, Rancho Cordova, California according to the terms stated in the Purchase Agreement filed as Exhibit "A," Dckt. 79, in support of the Motion.

38. 10-51570-E-13 FRANCIS/DONNA O'BRIEN — MOTION TO MODIFY PLAN
BLG-4 Chad M. Johnson — 7-25-13 [85]

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, 60 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that Debtor's modified plan proposes to reclassify Ecast Settlement Corporation from Class 2 secured

to Class 3 surrender, but do not authorize $779.00 in interest payments made by the Trustee.

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.

39. 12-31671-E-13 CHRISTIAN NEWMAN — MOTION TO CONFIRM PLAN
PGM-5 Peter G. Macaluso — 8-8-13 [118]

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 8, 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 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.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee objects on the basis that Debtor's plan may not be the Debtor's best effort because it appears not all income has been reported. Trustee states he has raised this objection on three previous occasions.

The Trustee also states the plan should be 60 months, but Debtor proposes payments of 59 months.

The Trustee also states there is conflicting dividend amount to general unsecured creditors. Section 2.15 of the plan proposes to pay not less than 2.44% to general unsecured claims, but Debtor's Motion states the plan will be 60 months with no less than 40% to be paid to general unsecured claims.

Additionally, the Trustee argues that he is unable to determine whether the Debtor can make plan payments or the feasibility of the plan because Debtor's Schedule I shows all of his income ($42,750) is from a significant other contribution. The August 12, 2012 (now more than a full year stale) Declaration of Mrs. Blackmer states she is willing to contribute $2,200.00 per month toward the plan. Declaration, Dckt. 20. Trustee states this declaration fails to state how she will be able to make the payment.

This stale declaration also raises the issue as to whether the Debtor's family unit is one person or two persons. Does his significant other live on the Property which secures the U.S. Bank, N.A. claim. The court is not provided with this information or the income of the significant other.

Lastly, the Debtor states the plan does not comply with the law as it does not authorize prior disbursements that the Trustee has made under the terms of the Debtor's prior plan.

CREDITOR'S OBJECTION THAT PLAN MODIFIES ITS DEBT

Creditor U.S. Bank, N.A., as trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1, objects to the plan on the basis that Debtor fails to pay any pre-petition arrears and attempts to illegally modify their first lien on the Debtor's primary residence.

Creditor states its objection on these grounds as follows.

> "2. Secured Creditor objects to the treatment as to its first lien on Debtor's principal residence as described in the Additional Provisions of Debtor's Amended Plan as any modification would be in violation of 11 U.S.C. 1322(b)(2). Debtor proposes to (a) not pay any pre-petition arrears and (b) to modify the post petition payment amount to $1075.00 per month. Debtor does not explain in the plan where the $1075.00 figure comes from but states that it "shall be applied first to post petition insurance and then principal, or as specified in the modification." Debtor is modifying the terms of the loan in violation of the Bankruptcy Code, therefore confirmation of the plan should be denied."

Objection, Dckt. 125.

The Creditor misstates the Plan provisions and any confirmation order of the court. With respect to this Creditor's claim, the plan expressly states [Emphasis Added],

> "6.04. **Adequate Protection Payment**
>
> The Debtor has in process a HAMP Application for modification of the loan upon which the **U.S. Bank, N.A. shall be paid $1,075.00 a month as an adequate protection payment for its secured claim,** pending determination on the loan modification. The monthly adequate protection payment shall be applied first to the post-petition interest accruing on this claim and then principal, or as a specified in a loan modification.
>
> **The Chapter 13 Plan does not modify the rights of U.S. Bank, N.A. for this secured claim, but provide adequate protect payments during the loan modification process.**"

The Plan terms also provide a very straightforward process by which this Creditor may seek termination of the automatic stay and foreclose on the Property. It merely requires that the Creditor either have denied the loan modification or show that the Debtor is not prosecuting the loan modification as required under the applicable laws, rules, and regulations.

Rather than putting Creditor, other creditors, the Debtor, and the Chapter 13 limbo of no confirmed plan because the Debtor and Creditor are negotiating in good faith a possible loan modification, during which period nobody is paid anything, the Debtor's proposed Chapter 13 Plan in good faith provides a payment to the Chapter 13 Trustee to fund the plan and provides an adequate protection payment to this Creditor – who otherwise would be receiving $0.00 while it and the Debtor wound through the process of a possible loan modification. FN.1.

FN.1. The court noted several things when first addressing the loan modification dance of a creditor and debtor in connection with a bankruptcy plan. First, some debtors sought to use "loan modification negotiations" as a canard to just not make any payments on the secured claim. Second, some creditors and their bankruptcy attorneys used the "pending loan modification" as a misdirection to kill any possible reorganization because it was more profitable based on the fees paid to counsel then having the creditor engage in a good faith loan modification discussion.

The process for making "pending loan modification negotiations" part of a confirmed Chapter 13 Plan and the plan terms at issue were developed over more than two years with the input of knowledgeable debtor counsel and sophisticated creditor counsel and creditors. Requiring a substantial adequate protection payment quickly separated the canard debtors with no intention of making any payments from the debtors proceeding in good faith (whether or not they had a realistic financial plan for modification). It also provided the creditor with a substantial adequate protection payment, as well as creating a track record of payments (which in some cases has replaced three months of trial loan modification payments).

The plan terms also provide the protection to the creditor of getting the stay terminated so that it can foreclose on the collateral if the loan modification is not approved or the debtor does not proceed in good faith. The plan terms, which require only that the creditor shows that specific information was requested and not timely applied (the 30-day period used by the court was pulled from the HAMP loan modification procedure), protects the creditor.

CREDITOR OBJECTION THAT CHAPTER 13 IS IN BAD FAITH

Creditor also raises another objection as to the good faith of a debtor filing bankruptcy and seeking to modify a loan as part of a Chapter 13 rehabilitation. Creditor states this objection as follows.

> 3. Secured Creditor further objects on the basis that Debtor is misusing the bankruptcy system, imposing additional burdens on other parties, and provisions 6.02-9.08 are unnecessary because there are state laws in place to protect Debtor during the loan modification process. Debtor has structured her plan to not repay any pre-petition arrears and make a modified payment while she applied to Secured Creditor for a loan modification with regard to the first lien on the subject property. Reading between the lines, Debtor is using the automatic stay as protection from foreclosure proceedings against her principal residence; however this is a misuse of the Chapter 13 Bankruptcy system, places unnecessary burdens on Secured Creditor (and possibly the Chapter 13 Trustee trying to administer the plan), and is unneeded due to the California Homeowner's Bill of Rights.
>
> The basic purpose of a Chapter 13 is essentially to repay debt; however **Debtor is not proposing to repay the pre-petition arrears to Secured Creditor and is proposing to underpay the post petition payments**. Debtor does not need to hide behind the automatic stay due to the California Homeowner's Bill of Rights which protects any borrower in California from foreclosure while they are in the process of applying for a loan modification. The California Homeowner Bill of Rights became law on January 1, 2013 to ensure fair lending and borrowing practices for California homeowners. One aspect of this law is the restriction on "dual tracking" which is when foreclosure actions continue while a borrower is also applying for a loan modification. Mortgage servicers are now restricted from advancing the foreclosure process if the homeowner is working on securing a loan modification. When a homeowner completes an application for a loan modification, the foreclosure process is essentially paused until the complete application has been fully reviewed. Therefore, Debtor does not have a need to revamp the Eastern District Chapter 13 Plan form and add provisions 6.02-6.08 which imposes additional obligations on all parties.

Opposition, Dckt. 125.

The gist of this argument is a contention that California having enacted the California Homeowner Bill of Rights due to the misconduct of lenders, such as Creditor, has effectively pre-empted the Bankruptcy Code because the consumer has that alternative. No authority is provided for how the enactment of this State Act has rendered the Bankruptcy Code as enacted by Congress pursuant to Article I of the United States Constitution a nullity.

No legal authority is presented in support of Creditors' arguments. The court believes that no authority is presented because no legal authority exists for portion of the objection. If the Plan was not confirmed and the adequate protection payments not authorized, creditor would be receiving $0.00 during the post-petition period while it processed the Debtor's loan modification application in good faith. There is no "reading between the lines necessary" as to the provisions of the Plan or the protection of Creditor's interests while it processes the Debtors loan modification in good faith. There is no hiding behind the automatic stay and not pay the creditor during the loan modification process.

The proposed Fourth Amended Plan provides not only for the adequate payments while the creditor processes the Debtor's loan modification in good faith, but providing for the following claims,

River City Commons, HOA Dues	$21,510.97 repaid through the Plan
Marine One Acceptance Corporation	$21,148.00 Claim Provided for by Class 3 Surrender of Collateral
Internal Revenue Service Priority Unsecured Claim	$3,047.18 Provided for Through the Plan
California Franchise Tax Board Priority Unsecured Claim	$481.51 Provided for Through the Plan
General Unsecured Claims	No Less Than 2.44% Dividend on $16,530.73 in Claims.

The Debtor has very limited income, now relying on $2,750.00 in income from his "significant other." On Form 22C the Debtor reports that he had $0.00 average monthly income during the six month period preceding the plan. While other grounds may exist to deny confirmation (see Chapter 13 Trustee's Opposition to Motion, Dckt. 123), that does not render the above argument by Creditor valid.

The California Law was enacted to provide protection for consumers from lender, who in the same position as Creditor, who were financially abusing consumers. The enactment of that law does not make a consumer who has a home loan filing bankruptcy a "misuse of Chapter 13." Further, the plan terms do not create additional burden on the parties, but reduces them for Creditor. If the plan terms were not included, then Creditor, while not receiving an adequate protection pay, would have to provide to the court grounds for relief from the stay under 11 U.S.C. § 362(d)(1) or (2), including providing that it was engaging in good faith loan modification negotiations. Rather, the Plan terms simplify that process for Creditor and putting in its hands the ability to (1) deny the loan modification and obtain an order granting relief from the

automatic stay, (2) simply show the court that the Debtor was not providing the necessary information requested and obtain relief from the automatic stay, or (3) after engaging in good faith negotiations, granting a loan modification.

The Opposition as stated by U.S. Bank, N.A., Trustee, is without merit and overruled.

RULING

While the opposition presented by U.S. bank, N.A., Trustee, is without merit, the opposition of the Chapter 13 Trustee is meritorious. The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The Debtor wants to compartmentalize his finances, having no income and disclosing only $2,200.00 a month in "contributions" from his significant other. The Debtor contends that he can keep his house and obtain a loan modification when he has no income. There is no credible evidence presented as to the ability of the Debtor to prosecute such a loan modification or fund the proposed plan. Rather, it appears that the Debtor and his significant other are attempting to slide some debts by creditors through this bankruptcy case and slide income by the court in keeping it undisclosed.

The proposed Fourth Amended Chapter 13 Plan fails to comply with 11 U.S.C. §§ 1322 and 1325, the Motion is denied, and the Plan is not confirmed.

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

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

40. 13-29072-E-13 GARY/JUDY DUERNER — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK TRUSTEE
NLE-1 Pro Se — 8-29-13 [42]

Final Ruling: The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

IT IS ORDERED that the Objection is dismissed as moot, the case having already been dismissed.

41. 13-29072-E-13 SW-2 | **GARY/JUDY DUERNER** | **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.** | **8-29-13 [32]**

Final Ruling: The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

IT IS ORDERED that the Objection is dismissed as moot, the case having already been dismissed.

42. 13-29072-E-13 SW-3 | **GARY/JUDY DUERNER** | **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.** | **8-29-13 [37]**

Final Ruling: The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

IT IS ORDERED that the Objection is dismissed as moot, the case having already been dismissed.

43. 08-29676-E-13 MAS-1 JOHN/ROXANNE CLEMENT Michael A. Scheibli

MOTION TO VALUE COLLATERAL AND TO AVOID LIEN OF HSBC MORTGAGE SERVICES
8-8-13 [71]

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

Correct Notice Was Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, parties requesting special notice, and Office of the United States Trustee on August 5, 2013. By the court's calculation, 50 days' notice was provided. 28 days' notice is required. However, the address that the creditor was served is not the address on California of Secretary of State or Georgia Secretary of State.

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 without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issue 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:

PROCEDURAL ISSUES

Naming Correct Creditor

Debtor seeks to value the collatearl and avoid the lien of creditor "HSBC Mortgage Services." 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 HSBC Mortgage Services is a creditor or agent for the creditor in this case. The Debtor does not testify that he borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to HSBC Mortgae Services. 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 at a proper address, 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.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect.

Service

The Debtor served the Creditor "HSBC Mortgage Services" on a post office box. 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."). According California Secretary of State HSBC's Mortgage Service Inc. entity address as 26525 N. Riverwoods Blvd, Mettawa Illinois.

The Debtor also served the Creditor's Agent at 3575 Piedmont Road, N.E. Ste 500, Atlanta, Georgia. However, the California Secretary of State lists CT Corporation System at 818 W. Seventh Street, Los Angeles California as the Agent for Service of Process. According to the Georgia Secretary of State, Agent for Service is CT Corporation System located at 1201 Peachtree Street, NE, Atlanta, Georgia.

Multiple Motions

In this Motion the Debtors request that the court value HSBC Mortgage Services' 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.

TRUSTEE'S OPPOSITION

Chapter 13 Trustee, David P. Cusick, filed a written opposition opposing Debtor's valuation of the subject property is $150,000.00. According the David P. Cusick, the Debtor had filed Schedule A (Dckt. 18), five years ago, indicating the value of subject property to be $241,560.00 based on valuation from cyberhomes. Additionally, the debtor did not include sale of property at 914 Saltu Drive for $237,500.00 on June 17, 2008 in the comparable analysis. The Debtor's property value would be comparable to $241,310.00 based on sale of 914 Saltu Drive.

Based on the procedural deficiencies, 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.

44. 08-29676-E-13 JOHN/ROXANNE CLEMENT — MOTION TO MODIFY PLAN
MAS-2 Michael A. Scheibli — 8-8-13 [77]

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 Debtors' 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 Dismiss the Bankruptcy Case having been filed by the Debtors, the Debtors 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.

45. 13-25076-E-13 KEITH SCHILLING
BSJ-2 Brandon Scott Johnston

CONTINUED MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK
5-24-13 [20]

CONT. FROM 7-2-13

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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 24, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Claim of USAA Federal Savings Bank has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 set 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 motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2222 Babson Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of $240,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's Opposition

Creditor opposes Debtors' valuation and states that the value of the subject property is $330,000.00. Creditor provides a copy of a Property Evaluation Report as Exhibit 1 to support its position. No declaration is provided authenticating this Exhibit or providing the court with any expert testimony upon which it can rely. Fed. R. Evid. 802, 702-705, 901.

Creditor requested that the court continue the hearing to allow Creditor to conduct such discovery as necessary to obtain expert testimony as to the value of the Property. The court so continued the hearing to afford the parties the opportunity to conduct discovery.

Analysis

There is a factual dispute as to the value of the subject property. Debtors contend that the property is valued at $240,000.00 and provide their declaration in support of such valuation. Creditor contends that the property is valued at $330,000.00.

The court continued the hearing to allow the Creditor and Debtors to file and serve supplemental pleadings and evidence of value.

CREDITOR'S SUPPLEMENTAL PLEADINGS

On August 13, 2013 the Creditor filed a Uniform Residential Appraisal Report and Declaration of Jeff Bolton. According to the Uniform Residential Appraisal Report and the Declaration of Jeff Bolton the real property is valued at $370,000 as of July 25, 2013. This is based on characteristics and condition of the subject property, market conditions, 11 comparable properties offered for sale in the subject neighborhood in price range of $319,900 to $499,950 and 65 comparable sales in the subject neighborhood within the past twelve months ranging in sale price of $190,000 to $560,000. Additionally, the appraisal used six sales comparable based on proximity, location, utility, gross living area, age and amenities to determine the value of the property to be $370,000.

In support of its argument Defendant provides a copy of the Uniform Residential Appraisal Report and Declaration of Jeff Bolton. (Dckt. 53, Exhb. 1 & 2). Defendant incorrectly filed the exhibits and Declaration in a single document. Pursuant to the Revised Guidelines for the Preparation of Documents, ¶(3)(a) "[m]otions, notices, objections, responses, replies, 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." 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). The Defendant's noncompliance is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Debtor's Supplemental Pleadings

The debtor did not file or serve pleadings and evidence to value in response to the Creditor's appraisal or the declaration by Jeff Bolton by September 9, 2013.

The court shall issue an Evidentiary Confirmation Hearing Order setting the following dates and deadlines:

A. On or before xxxxx, 20xx, the parties shall file their respective witness and exhibits lists, with a copy of each list delivered to Janet Larson, Courtroom Deputy for Department E. The court will include said designated witnesses and exhibits in the Evidentiary Hearing setting order. Failure to designate a witness or exhibit will preclude use thereof for the parties case in chief or as rebuttal evidence if such "rebuttal" was reasonably anticipated (such as a counter appraisal).

B. Testimony and exhibits shall be presented to the court pursuant to Local Rule 9017-1. Presentation of witnesses at the hearing is required.

C. Debtors shall lodge with the court and serve their direct testimony statements and exhibits on or before ----------.

D. USAA Federal Savings Bank shall lodge with the court and serve their direct testimony statement on or before ----------.

E. Evidentiary objections and confirmation hearing briefs shall be filed and served on or before ----------.

F. Oppositions to evidentiary objections shall be filed and served on or before ----------.

G. The Evidentiary Confirmation Hearing shall be conducted at ----------.

46. 12-36378-E-13 MARILYN/JOSHUA JOHNSON MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 8-8-13 [128]

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 8, 2013. By the court's calculation, 47 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 August 8, 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.

47. 09-35281-E-13 BLG-2 TODD/KARI ZIEGENHAGEN Chad M. Johnson MOTION TO MODIFY PLAN 8-8-13 [89]

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 8, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that debtor incorrectly states $8,872.66 has been paid Class 2 claim of PRA Receivables as of August 7, 2013 in the additional provisions when the correct amount is $8,871.66.

Trustee states that Debtor does not report interest payments to Class 2 creditor PRA Receivables Management LLC in the amount of $1,000.06, interest of $1,071.42 to Class 2 creditor Chase Auto Finance and amounts disbursed to the debtors prior attorney of $1,000.00.

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.

48. 13-29181-E-13 SPB-1 — SAM/DAYNA CROWLEY — Stanley P. Berman — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. — 8-21-13 [26]

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

Correct Notice Was 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 August 21, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. However, the creditor was not served as required by Federal Rule of Bankruptcy Procedure 7004(h).

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

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

Debtor seeks to value the collateral of Bank of America, N.A. However, Bank of America, N.A. was not served as required by Federal Rule of Bankruptcy

Procedure 7004(h). Rule 7004(h) requires that service upon a federally insured depository institution be made upon an officer by certified mail. Here, Debtors served Bank of America N.A.'s registered agent, CT Corporation System and Prober & Raphael, A Law Corporate, by U.S. Mail but neglected to serve the documents through certified mail as required by the Federal Rules of Bankruptcy Procedure. See *Hamlett v. Amsouth Bank* (*In re Hamlett*), 322 F.3d 342, 346 (4th Cir. 2003)(holding that nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h) — which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 — indicates that Congress intended for "officer" to include a registered agent). None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

Additionally, the Debtor neglected to serve the Bank to the attention of an officer as required by the Federal Rules of Bankruptcy Procedure. The California Secretary of State's website provides the entity address as: 150 N. College St. NC 1-028-17-06, Charlotte NC 28255. The Federal Deposit Insurance Corporation provides the following address for Bank of America, N.A: 100 North Tryon St. Charlotte, NC 28202.

EVIDENCE

Single Document

In support of its argument Debtor provides a copy of his attorney's declaration and the appraisal of Mel Harris Real Estate Appraisal Services in one document.(Dckt. 28). Debtor incorrectly filed the exhibits and Declaration in a single document. Pursuant to the Revised Guidelines for the Preparation of Documents, ¶(3)(a) "[m]otions, notices, objections, responses, replies, 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." 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). The Debtor's noncompliance is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Local Bankruptcy Rules and Guidelines exist for a very practical reason. With the court operating in a near paperless environment, combining of pleadings into one massive document renders it all but unworkable electronic document. The court does not have a differential application of the rules by which some attorneys must comply with the rules and other attorneys may selectively chose which rules they accept as applying to them. The court has also observed that the more complex the combined document into which the grounds are hidden, the more likely it is that no proper grounds exist.

Authentication

The debtor provides his attorney, Stanley P. Berman's declaration [Dckt. 28] in support of Motion to Value Collateral declaring that "true and correct copies of the appraisal completed by Mel Harris" are attached and show the appraised value of $78,500. The court will *sua sponte* take notice that the Stanely P. Berman's Declaration is not within exception to Hearsay Rule and it

does not resolve the authentication requirement, (Fed. R. Evid. 901) for the Mel Harris's appraisal.

The Federal Rules of Evidence are clear and straight forward with respect to what constitutes proper and competent evidence. These Rules include the following.

Federal Rule of Evidence 602. Need for Personal Knowledge

> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. FN.1.

FN.1. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VI, § 602.02

§ 602.02 Purpose and Applicability of Rule

[1] Personal Knowledge as Most Reliable Evidence

A witness may testify only about matters on which he or she has first-hand knowledge. The witness's testimony must be based on events perceived by the witness through one of the five senses.

The Rule is an extension of the law's usual preference that decisions be based on the best evidence available, although this preference is not an actual rule of evidence. The Rule acknowledges that distortion increases with transfers of testimony, and that the most reliable testimony is obtained from a witness who has actually perceived the event.

Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

Federal Rule of Evidence 701. Opinion Testimony by Lay Witnesses

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. FN.2.

FN.2. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VII, § 701.03, 701.06

§ 701.03 Requirements for Admissibility

[1] Opinion Must Be Based on Personal Perception

To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.

In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations....

§ 701.06 Trial Judge Has Broad Discretion to Admit or Exclude Lay Opinion Testimony

Trial courts have broad discretion in determining whether to admit or to exclude lay opinion testimony. This discretion applies both to the general decision to admit or exclude the evidence and to the subsidiary questions included in that determination:

Whether the opinion is based on the witness's personal perception.

Whether the opinion is rationally connected to the witness's personal perceptions.

Whether the opinion will assist the trier of fact in understanding the witness's testimony or in determining a fact in issue. (cont.)

Whether the probative value of the testimony outweighed its potential prejudicial effect.

Federal Rule of Evidence 801. Definitions That Apply to This Article; Exclusions from Hearsay

> (a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
>
> (b) Declarant. "Declarant" means the person who made the statement.
>
> (c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Federal Rule of Evidence 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Additionally, the declaration provided by Mr. Berman states that he provides his testimony under penalty of perjury based only on "the best of my knowledge and belief." Dckt. 28. In substance, Mr. Berman is 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.

The Declaration of Stanley Berman is so substantively defective the court can only conclude that is was intentionally done to mislead the court. The fact that Mr. Berman can make a copy of somebody else's appraisal is of little evidentiary moment. Testifying under penalty of perjury is not merely an opportunity for an attorney to testify as to whatever facts he or she needs to establish for his or her client to prevail (and the attorney justify the attorneys' fees they are being paid).

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.

49. 13-29181-E-13 SAM/DAYNA CROWLEY **MOTION TO VALUE COLLATERAL OF**
SPB-2 **BANK OF AMERICA, N.A.**
8-21-13 [31]

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

Correct Notice Was 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 August 21, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. However, the creditor was not served as required by Federal Rule of Bankruptcy Procedure 7004(h).

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

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

Debtor seeks to value the collateral of Bank of America, N.A. However, Bank of America N.A. was not served as required by Federal Rule of Bankruptcy Procedure 7004(h). Rule 7004(h) requires that service upon a federally insured depository institution be made upon an officer by certified mail. Here, Debtors served Bank of America N.A.'s registered agent, CT Corporation System and Prober & Raphael, A Law Corporate, by U.S. Mail but neglected to serve the documents through certified mail as required by the Federal Rules of Bankruptcy Procedure. See Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 346 (4th Cir. 2003)(holding that nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h) — which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 — indicates that Congress intended for "officer" to include a registered agent). None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

Additionally, the Debtor neglected to serve the Bank to the attention of an officer as required by the Federal Rules of Bankruptcy Procedure. The California Secretary of State's website provides the entity address as: 150 N. College St. NC 1-028-17-06, Charlotte NC 28255. The Federal Deposit Insurance Corporation provides the following address for Bank of America, N.A: 100 North Tryon St. Charlotte, NC 28202.

EVIDENCE

Single Document

In support of its argument Debtor provides a copy of his attorney's declaration and the copies of comparable sales which show an average sales price of $127,917 in one document.(Dckt. 33). Debtor incorrectly filed the exhibits and Declaration in a single document. Pursuant to the Revised Guidelines for the Preparation of Documents, ¶(3)(a) "[m]otions, notices, objections, responses, replies, 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." 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). The Debtor's noncompliance is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Local Bankruptcy Rules and Guidelines exist for a very practical reason. With the court operating in a near paperless environment, combining of pleadings into one massive document renders it all but unworkable electronic document. The court does not have a differential application of the rules by which some attorneys must comply with the rules and other attorneys may selectively chose which rules they accept as applying to them. The court has also observed that the more complex the combined document into which the grounds are hidden, the more likely it is that no proper grounds exist.

Authentication

The debtor provides his attorney, Stanley P. Berman's declaration (Dckt. 33) in support of Motion to Value Collateral declaring that "true and correct copies of comparable sales" are attached and show the average sale price of $127,917. The court will sua sponte take notice that the Stanely P. Berman's Declaration is not within exception to Hearsay Rule and it does not resolve the authentication requirement, Fed. R. Evid. 901 for the comparable sales.

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.

50. 13-29685-E-13 NLE-1 YAROSLAV ZAKHARNEV AND INNA PESHKOVA Scott A. CoBen — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK TRUSTEE 8-29-13 [39]

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 29, 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 continue the hearing on the Objection to 3:00 p.m. on October 8, 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:

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 meeting was continued to September 19, 2013.

Counsel for Debtors respond, stating the Debtors misunderstood when they were to attend court. Debtors state they will attend the continued meeting on September 19, 2013.

The Trustee's Report of the September 19, 2013 continued First Meeting of Creditors states that the Debtors appeared and the meeting was concluded. The court cannot tell if the information provided at the First Meeting of Creditors was satisfactory, requires further investigation, or identified substantive grounds for objecting to the Plan.

This court will continue the hearing to allow the Chapter 13 Trustee and Creditors to evaluate the information provided at the continued Meeting of Creditors.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 hearing on the Objection to confirmation the Plan is continued to 3:00 p.m. on October 8, 2013.

51.	**13-29685-E-13 SAC-5**	**YAROSLAV ZAKHARNEV AND INNA PESHKOVA Scott A. CoBen**	**CONTINUED MOTION TO VALUE COLLATERAL OF UMPQUA BANK 7-31-13 [30]**

CONT. FROM 9-10-13

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:

PRIOR HEARING

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.

CONTINUANCE

The court continued the hearing to allow Debtor to provide evidence that the business equipment and the real property are not a purchase-money loan acquired within the one year period prior to the filing of the petition. No supplemental evidence or documentation has been provided to date.

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.

52. 13-30990-E-13 EVELYN WHITE
SJJ-1 Stephen J. Johnson

MOTION TO VALUE COLLATERAL OF BENEFICIAL/HSBC
8-21-13 [8]

APPEARANCE OF STEPHEN J. JOHNSON, PERSONALLY, ATTORNEY FOR THE DEBTOR REQUIRED FOR SEPTEMBER 24, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

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

Correct Notice Was Not 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 21, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. However, the name of the creditor and the address that the creditor was served is not the address on the California of Secretary of State's or Illinois Secretary of State's website.

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

Debtor seeks to value the collateral of "Beneficial/HSBC." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor. FN.1.

FN.1. It appears that the name "Beneficial/HSBC" is a made-up name, with the Debtor admitting that she has no idea who the creditor is and seeks an order valuing that unidentified creditor in abstentia. If the court were to grant such order, it would be ineffective, subjecting the Debtor to years of paying under a plan, only to discover that she still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under

a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well.

The court notes that the Debtor has not attempted to serve the entity which is contended to have the claim to be valued by this Motion – Beneficial/HSBC. Certificate of Service, Dckt. 11. Rather, the Debtor has served "HSBC."

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 does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the third deed of trust. FN.2.

FN.2. 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 has required counsel for the Debtor to appear at this hearing. The repeated defects in pleadings by counsel in failing to properly serve the other party or identifying the creditor has caused this court to question whether (1) counsel is able to practice in federal court or (2) counsel is intentionally failing to properly prepare and serve pleadings to mislead the court, Chapter 13 Trustee, the target party, the U.S. Trustee, and creditors.

The court will consider whether an Order to Show Cause for the issuance of corrective sanctions by this court is warranted, and whether the matter should be referred to the United States District court for corrective (including suspension of counsel's admission to the Eastern District of California until the District Court is satisfied that he is properly education on the presentation of evidence and proper pleadings) and punitive sanctions.

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.

53. 13-30194-E-13 SUSAN ZAVALA
EJS-2 Eric John Schwab
MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION
9-5-13 [24]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 5, 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 5240 Cabrillo Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $105,000.00 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 $260,000.00. Safe Credit Union's second deed of trust secures a loan with a balance of approximately $26,434.00. 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 Safe Credit Union secured by a junior deed of trust recorded against the real property commonly known as 5240 Cabrillo 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 $105,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

54. 09-24599-E-13 PAUL/LORI ANDERSON MOTION TO MODIFY PLAN
PGM-7 Peter G. Macaluso 8-20-13 [144]

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that Debtors have paid ahead $275.00 under the proposed plan. The proposed modified plan lists payments as "$118,383.44 through 8/13, then $2,665.00 x 7 starting 9/13." According to the Trustee, the Debtors have paid in $118,658.44 through August 2013 and another payment of $2,665.00 was posted on September 6, 2013, reflecting a difference of $275.00. The Trustee states he has no objection to correcting this in the order confirming.

The Debtor responds, stating that they propose the requested amendment to the plan, which shall be stated in the order confirming.

The modified Plan, as modified, 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 August 20, 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. 13-28099-E-13 MICHIE SCHMITZ — MOTION TO DISGORGE FEES
TSB-3 Geoffrey A. Sutliff — 8-26-13 [29]

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, and Office of the United States Trustee on August 26, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Disgorge Fees 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.

The Motion to Disgorge Fees is granted. 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 the court for an order disgorging attorney fees in this case pursuant to 11 U.S.C. § 329. The Trustee argues that Debtor appeared at the First Meeting of Creditors scheduled for August 1, 2013, but the hearing was continued to August 29, 2013 because Debtor's counsel failed to appear. Trustee states he has made no contact with his office as of the date of this filing. The Trustee states he filed an objection to confirmation, which raised several issues with the Debtor's proposed plan and schedules.

The Trustee argues that the 2016(b) form stating that Debtor paid counsel $1,000 prior to filling and a balance of $500.00 was owed. No Rights and Responsibilities was filed in this case. The proposed plan indicates that Debtor paid counsel $1000 prior to filing but that no additional fees were owed.

Trustee states he is unable to determine how much of the fees paid have been earned preparing the Debtor's petition and schedules bit requests that

some of all of the $1,000 paid prior to filing be refunded to the Debtor, should counsel not appear at the First Meeting of Creditors.

The court grants the motion and orders Geoffrey A. Sutliff, counsel for the Debtor, to pay all monies received in connection with this bankruptcy case to the Chapter 13 Trustee. The Chapter 13 Trustee shall retain such monies and not disburse them except upon further order of the court. FN.1.

FN.1. Though counsel has been busy filing documents, in response to the Chapter 13 Trustee's motion to dismiss this case, he has not file any opposition to the present motion. The court does not know whether counsel will be allowed any fees in this case, and having the Chapter 13 Trustee hold those monies, rather than the attorney hold them in his trust account, protects the interests of the estate, Debtors, and counsel. Whether held by the Trustee or in counsel's trust account, it is of little financial moment to counsel.

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 Disgorge Fees 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 is granted and o Geoffrey A. Sutliff, counsel for the Debtor, shall pay all monies received in connection with this bankruptcy case, including the $1,000.00 identified in the Motion, to the Chapter 13 Trustee on or before October 30, 2013. The Chapter 13 Trustee shall retain such monies and not disburse them except upon further order of the court.