UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 29, 2013 at 3:00 p.m.

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1. 10-38007-E-7 GLENDA/JOSHUA GOLDEN
11-2741
CHUNG ET AL V. GOLDEN ET AL

CONTINUED FINAL RULING RE: COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF A DEBT
11-21-11 [1]

No Tentative Ruling.

2. 11-21003-E-13 HENRY/TAMMY DOWNS
EJS-4 Eric John Schwab

OBJECTION TO CLAIM OF HARLEY DAVIDSON CREDIT CORPORATION, CLAIM NUMBER 7
9-10-13 [76]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 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). 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).

The Objection to Proof of Claim number 7 of Harley-Davidson Credit Corporation is overruled, as the Proof of Claim filed only asserts an unsecured claim. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 7 on the court's official claims registry, asserts $3,781.29 unsecured claim. The Debtor

objects to the Proof of Claim on the basis that Harley-Davidson Credit Corporation purports to be a secured creditor.

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).

Based on a review of Proof of Claim No. 7, Harley Davidson Credit Corporation only asserts an unsecured claim in the amount of $3,781.29. While "Box 4 - Secured Claim" lists the description under the "nature of property" as 2004 HARLEY-DAVIDSON FLHTCSE 1HD1PJE364Y951916, it is expressly states under "Amount of Secured Claim" N/A, or not applicable. Furthermore, there is no certificate of title attached to the Proof of Claim showing a secured interest in the property.

It appears that this Objection has been filed because the creditor specifically identified property in the Secured Claim portion of Proof of Claim No. 7. Discretion being the better part of Debtors' valor, the issue is now before the court.

Based on the evidence before the court, the creditor's claim is allowed as an unsecured claim. The Objection to the Proof of Claim is overruled, the court determining that Harley-Davidson Credit Corp has not asserted a secured claim in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Harley Davidson Credit Corporation filed in this case 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 objection to Proof of Claim Number 7 of Harley Davidson Credit Corporation is overruled, the court having determined that Proof of Claim Number 7 is filed by this creditor as a completely unsecured claim.

3. 12-30905-E-13 JOSEPH DEHAAN **MOTION TO MODIFY PLAN**
JT-5 John A. Tosney **8-23-13 [54]**

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's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2013. By the court's calculation, 67 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 23, 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.

4. 08-36208-E-13 JERRY/WANDA MACK MOTION TO MODIFY PLAN
BLG-3 Pauldeep Bains 9-12-13 [99]

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 September 13, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The 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). 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 grant the Motion to Confirm the Modified Plan. No appearance at the October 29, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes the proposed plan on the basis that it does not authorize interest payments made to Bank of America in the amount of $1,620.05 and to BMW Financial Services in the amount of $1,558.25. The Trustee states he would have no objection if this were corrected in the order confirming.

Debtors respond, stating that they will submit an order confirming plan to the Trustee that will include the requested authorization.

The Trustee further notes that under the proposed Modified Plan he will continue to make distributions to creditors holding general unsecured claims. Though the Confirmed Plan and the proposed Modified Plan for a dividend of not less than 0.00%, based on the claims filed and plan payments, dividends are being and projected by the Trustee to continue to be made for general unsecured claim. The court accepts this as a statement of performance under the Plan and not an objection to confirmation.

Debtors having addressed the Trustee's concern, the modified Plan complies with 11 U.S.C. §§ 1329, 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 September 12, 2013 is confirmed, as amended by the Debtors' Reply (interest payments heretofore made to creditors with secured claims) and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. 12-22208-E-13 IRVIN/THERESA WHITE — MOTION TO MODIFY PLAN
EJS-6 Eric John Schwab — 9-24-13 [88]

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 September 24, 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 September 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 11-21409-E-13 FRANCISCO GUILLEN — MOTION TO MODIFY PLAN
SAC-1 Scott A. CoBen — 9-11-13 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 11, 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.	**13-31109-E-13 NLE-1**	**RONALD DICKERSON AND MARY SANER Gerald B. Glazer**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-3-13 [16]**

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 October 3, 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 was not filed in good faith under 11 U.S.C. § 1325(a)(7). Trustee states that Debtors propose a 36 month plan paying $75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims.

Trustee argues that it does not appear the Debtors are attempting to restructure their debts in good faith and that other than proposing to pay Debtors' counsel fees of $2,100.00, Debtors do nothing to restructure their finances. Trustee argues that this Chapter 13 case is nothing more than a disguised Chapter 7 which appears to be in violation of the Supreme Court's ruling in *In re Dewsnup*, 502 U.S. 410 (1992).

Additionally, the Trustee argues the Debtors' plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors list on Schedule B a potential lawsuit, listed at an unknown value. The asset is exempted on Schedule C also in an unknown amount. The Trustee argues the non-exempt equity, if any, upon the claim being realized should be contributed to the plan.

The Trustee argues that the proposed plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are below median income proposing a 36 month plan paying $75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims. Trustee argues that Debtors are not proposing all their disposable income into the plan. Debtors list their residential real property in Class 3 of the plan to surrender the property. Trustee states that Debtors testified at the 341 meeting that they have not yet received a notice of default or any foreclosure action by the lender on the property but that they have missed five (5) mortgage payments. Debtors list an expense of $1,100.00 per month for mortgage or rent. Trustee states that Debtors also testified at the 341 meeting that the expense for rent or mortgage was an anticipated expense that will begin upon the foreclosure of their residence.

Trustee argues that Debtors should be required to commit their projected disposable income into the plan and until the time they are moving, rent is not a necessary expense. Trustee argues the plan payment should be increased by $1,100.00 per month.

Lastly, the Trustee argues the Debtor may not be able to make the payments called for under the plan. Debtor has only $270.00 in their bank accounts and no cash. Where the Debtor has not paid rent for 5 months and the Debtor has no cash and nothing in their checking and savings, the Trustee argues that the Debtor's income is less or the expenses are more than scheduled.

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

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

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

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

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

8. 09-28310-E-13 CARLA WATKINS — MOTION TO MODIFY PLAN
JLB-3 James L. Brunello — 9-11-13 [59]

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 September 11, 2013. By the court's calculation, 48 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 Trustee argues that the Debtor's plan has not been filed in good faith or is the Debtor's best effort. The debtor's confirmed plan is for a period of 60 months. The Debtor's form B22C indicates the debtor is above median income and that the applicable monthly commitment period is five years. The Debtor is now proposing to reduce the term to 50 months. The 50th month of the plan was June 2013 (four months ago). The proposed plan was not filed until September 11, 2013, over two months after the proposed end of the plan. The debtor is currently on the 54 month of the plan.

The Trustee states that based on the declaration provided by the Debtor stating she has $350.00 less in disposable income each moth due to less income and increased expenses and under the confirmed plan the disposable income is $3,741.56, Debtor has $3,391.56 in current disposable

income. Payments to be made under the confirmed plan to secured creditors each month total approximately $3,000.00, including Trustee Fees. Thus, Trustee states approximately $391.56 is available for unsecured creditors.

Trustee argues that it appears Debtor is attempting to obtain a hardship discharge without having the court grant one.

Further, the Trustee objects that the Debtor's plan is not properly signed, as the name of the person signing the document shall be typed underneath the signature, pursuant to Local Bankruptcy Rule 9004-1(c). This too is cause to deny confirmation.

REVIEW OF MOTION AND MODIFIED PLAN

The Debtor's Motion states with particularity the following grounds upon which relief is based (Fed. R. Bankr. P. 9013).

A. Debtor's plan is being modified to match the actual claims filed.

B. Debtor's plan is to reduce the length of the plan to 50 months.

C. All secured claims have been paid in full.

D. Continuing payments under the existing Confirmed Plan are a hardship on the Debtor. [The court is instructed to read the Debtor's declaration and distill what statements therein should be asserted as grounds for the requested relief.]

E. The proposed Modified Plan complies with applicable law.

F. The proposed Modified Plan is proposed in good faith.

G. The Debtor has paid all fees and charges required.

H. Unsecured claims will be paid at least as much as they would have received through a Chapter 7 case.

I. All secured claims have accepted the plan, or the Debtor surrenders the property, or the plan provides to pay the claims pursuant to 11 U.S.C. § 1325(a)(5)(B). [The Debtor does not allege what the treatment is, but merely for the court to pick one of three possible alternatives for the Debtor.]

Motion, Dckt. 59.

The proposed Modified Plan requires the Debtor to make monthly plan payments of $3,555.00. The Debtor is an over-median income Debtor, for which the applicable commitment period is 60 months. Chapter 13 Statement of Current Monthly Income, Dckt. 1 at 8, 11 U.S.C. § 1325(b)(4). The Motion does not allege any grounds for which the court should consider shortening the plan term as may be permitted under 11 U.S.C. § 1329(a)(2).

The proposed Modified Plan provides for the following payments to be made thereunder.

I. Administrative Expenses

A. Debtor's Attorney.....$2,500.00 (Avg. $50/month)
B. Chapter 13 Trustee...Average $284.80/month (Est. 8%)

II. Class 1 Secured

A. CitiMortgage.....$1,065.67 (Contract)
B. CitiMortgage.....$ 44.84 (Arrearage)
C. OneWest.....$1,916.07 (Contract)
D. OneWest.....$ 124.78 (Arrearage)

III. Class 2 Secured

A. County of Sacramento.....$ 218.50

IV. Class 3 - Surrender Collateral

A. None

V. Class 4 Secured - Direct Debtor Payment

A. Nationwide Invst. Sec.....$551.23

VI. Class 5 - Priority Unsecured

A. None

VII. Class 6 – Designated Unsecured Claims

A. None

VIII. Class 7 - General Unsecured Claims

A. 0% Dividend for $48,678.60 general unsecured claims.

The Debtor has provided her declaration in support of the Motion to confirm the Proposed Modified Plan. The substance of her testimony is,

A. The reason for modifying the plan is to,

1. Change the amount of the claims [unidentified] to match the actual claims filed [unstated].

a. This change appears to be for the arrearage stated by the two creditors, which is lower than the amount stated in the original Plan.

(1) Citimortgage

(a) Original Plan...$4,325.12 Arrearage
i) Payment.....$72.09

(b) Modified Plan...$2,242.06 Arrearage
i) Payment.....$44.84

(2) OneWest

(a) Original Plan...$8,004.04
i) Payment.....$133.40
(b) Modified Plan...$6,238.80
i) Payment.....$124.78

2. Shorten the term of the Plan from 60 months to 50 months.

B. The arrearage on the two Class 1 claims have been paid.

C. The Debtor's income and expense situation has changed since when the case was filed.

Income and Expenses When Case was Filed		Current Income and Expenses
$5,460	Gross Pay	
$3,410	Net Pay	
$0	Retirement	$3,445
$1,275	Rent	$1,275
$100	Daughter Contribution	$0
$500	Roommate Rent	$500
$624	Caregiving	$527
$5,909	Total	$5,747
Amended Schedule J, Dckt. 21	Expenses	Debtor's Declaration
($300)	Electricity, Fuel	($300)
($175)	Water, Sewer	($175)
($90)	Phone	($90)
($70)	Garbage	($86)
($75)	Home Maintenance	($75)
($500)	Food	($700)

($75)	Clothing	($75)
($35)	Laundry	($35)
($62)	Medical, Dental	($62)
($300)	Transportation	($300)
($50)	Recreation	($50)
($92)	Life Insurance	($92)
($40)	Auto Insurance	($40)
($72)	Dry Creek Insurance	($72)
($200)	Dry Creek Taxes	($200)
($72)	Dry Creek Water, Trash	($72)
($2,208)		($2,424)
$3,701	Projected Disposable Income Computation	$3,323

With respect to the increase in food expenses, the Debtor states that has family unit has increased to 8 persons. However, the Debtor does not disclose any income (wages, salary, business, benefits, or support) for any of these seven other persons.

For income, the Debtor states that she is getting older and doesn't know that she will be able to continue being the caregiver for her brother, and may lose the $527.00 a month income for that service.

The Debtor states that her vehicle has over 200,000 miles on it and recently had a major repair. She also testifies that several family members, addressing medical and mental health challenges, have all moved in together to make ends meet.

The Debtor also provides her personal legal conclusions and factual findings that (1) the petition has been filed in good faith, (2) she will be able to make the plan payments, (3) the statutory alternatives for treatment of secured claims, and (4) that the plan meets the Chapter 7 liquidation test.

In seeking this modification of her Confirmed Chapter 13 Plan, it appears that the most significant economic change is that the Debtor's income has dropped $100.00 because her daughter is no longer providing a $100.00 a month contribution. Presumably the Debtor would argue that if she had the lower arrearage amount then she would have not needed the contribution from her daughter and have confirmed a Plan which provided for a $3,455.28 a month payment for 60 months – for aggregate plan payments totaling $207,316.60. The proposed 50 month plan with payments of $3,555.00 a month provides for aggregate plan payments of $177,750.00 a month. The proposed Modified Plan substantially reduces by $30,000.00 what the total plan payments may have been if the Debtor had the correct arrearage information. No explanation is given for this reduction.

In reviewing Schedule I the Debtor lists five family members,

1. Daughter — Adult
2. Grandson - Minor
3. Granddaughter - Minor
4. Grandson - Minor
5. Brother - Adult (Health Issues)

The Debtor also shows a $551.23 a month 401K loan repayment and a deduction for taxes and Social Security equal to 20% of the Debtor's gross income. Schedule I, Dckt. 1 at 31-32. The Debtor does not disclose the household income of the brother, but does state that she receives $624.00 from the State of California as his caregiver. It also states that in 2009 the Daughter was starting nursing school.

Schedule A lists the Debtor owning property on Drycreek Road with a value fo $117,000.00 that was subject to liens of $119,077. Dckt. 1 at 17. Schedule I lists income of $1,275.00 in rent from this property. Amended Schedule J lists the following monthly expenses for the Drycreek Road Property: ($72.19) for insurance, ($200.00) for taxes, and ($71.76) for water/trash. No expenses are included for maintenance or repairs.

The Chapter 13 Plan identified the regular monthly contract payment for the debt secured by the Drycreek Property was $1,065.67. Taking just the expenses listed (without any repair or maintenance expense) on Schedule J and the current contract monthly payment, ($1,409.62), and subtracting that from the $1,275.00 a month income, the Drycreek Property had a monthly negative cash flow of $134.00. Extended over the 60 months of the Plan, the Debtor forecast losing at least ($8,077.20), and having creditors subsidize, over the life of the Plan from this property.

The Debtor is now, through September 2013, 54 months into the proposed 50 month plan. The Debtor has not show a basis for granting the Motion and modifying the plan solely to shorten the time period for paying projected disposable income to fund the plan. Though grounds may exist, the Debtor has not provided a full current financial picture, including income for Brother, income for Daughter, and income for Grandchildren, as well as any support or benefits any of them are receiving.

The modified Plan does not comply with 11 U.S.C. §§ 1329, 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.

9. 12-37010-E-13 LITO/ANNA SAJONAS — MOTION TO CONFIRM PLAN
BLG-5 Pauldeep Bains — 9-12-13 [114]

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 September 12, 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 September 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.

10. 13-33111-E-13 SARAH RICHEY — MOTION TO EXTEND AUTOMATIC STAY
RI-1 Rebecca E. Ihejirika — 10-11-13 [10]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on October 11, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 10-43577-B13) was dismissed on June 5, 2013, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 10-43577-B13, Dckt. 49, June 5, 2013. Therefore, pursuant to 11 U.S.C.

§ 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and states that she was unable to make plan payments when some of her tenants stopped paying their rent when it was due on her rental properties. Debtor testifies that she now has tenants who are paying their rent and she now has the financial ability to make her plan payments in this Chapter 13 plan. Debtor also testifies that she has obtained two modification on mortgages which has reduced her monthly mortgage payments. The Debtor asserts that she is able to perform under their new Chapter 13 plan.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she has tenants who are paying rent regularly and has received two loan modifications on the properties, which lowers her mortgage payments. Debtor now asserts that she has sufficient income that will allow her to perform under the new Chapter 13 plan.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review

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

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

11. 13-33111-E-13 RI-2 SARAH RICHEY Rebecca E. Ihejirika

MOTION TO VALUE COLLATERAL OF CHASE AUTO FINANCE 10-11-13 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 11, 2013. By the court's calculation, 18 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 $12,898.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2009 Hyundai Genesis. The Debtor seeks to value the property at a replacement value of $12,898 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to filing of the petition, with a balance of approximately $14,001.00. 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 $12,898.00. *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 Chase Auto Finance secured by an asset described as 2009 Hyundai Genesis is determined to be a secured claim in the amount of $12,898.00, 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 $12,898.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. 13-29014-E-13 DPR-2 — CLEMENTE/DIANNA OROPEZA — David P. Ritzinger — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. — 9-27-13 [24]

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 September 27, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 610 Humboldt Drive, Dixon, California. The Debtor seeks to value the property at a fair market value of $155,165.00 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 $248,475.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $60,279.00. 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 Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 610 Humboldt Drive, Dixon, California, APN 0113-161-140, 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 $155,165.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

13. 13-31916-E-13 DALE/LEILANI MILLER **MOTION TO AVOID LIEN OF ONEWEST**
MIL-1 Pro Se **BANK GROUP**
9-11-13 [9]

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee Jan P. Johnson, respondent creditors on September 11, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

SERVICE

The Motion to Avoid a Judicial Lien is denied for incorrect service. First, OneWest Bank Group was not correctly served. The court does not recognize the address service was sent as matching that listed by the FDIC for federally insured financial institutions or with the California Secretary of State. It was sent to "Corporate Service Company, c/o Indymac & OneWest Bank Group, LLC. Furthermore, Federal Rule of Bankruptcy Procedure 7004(b)(3) requires that service on a corporation be addressed to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. Here, this was not done. Additionally, if OneWest Bank, N.A. is the creditor, then it must be served by certified mail, sent to the attention of an officer. Fed. R. Bankr. P. 7004(h). FN.1.

FN.1. Links to the FDIC and California Secretary of State websites are available on this court's website under "Additional Links."

Furthermore, the Chapter 13 Trustee was not served. David Cusick is the correct Chapter 13 Trustee in this case. Here, Jan P. Johnson was served as the Chapter 13 Trustee. Incorrect service is grounds to deny the motion. However, on September 26, 2013, the Debtors re-noticed the hearing, serving David Cusick.

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

A. The Debtor filed with this court their Voluntary Petition under Chapter 13 of the United States Bankruptcy Code on 9/11/13.

B. This court has jurisdiction over the parties and subject of this core proceeding pursuant to 28 U.S.C. § 1334 and 157(b)(2)(k).

C. This motion is brought pursuant to 11 U.S.C. § 506(a), 506(d) and 1322(b)(2) to avoid an undersecured mortgage lien held by One West Bank against the Debtors' principle residence.

D. Debtors' interest in the property referred to in the preceding paragraph and encumbered by the lien has been claimed as fully exempt under 11 U.S.C. § 522(d) and the existence of the lien impairs the exemptions that Debtors are entitled.

The Motion to Avoid Lien does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtors seek to "avoid the lien" of One West Bank. However, Debtors do not provide the basis to avoid a second mortgage. It appears that Debtors actually require a Motion to Value a Secured Claim - but do not provide the requisite factual information (value of the home, amount of the liens encumbering the property) in order for this court to grant relief.

The court notes that this motion does not require the removal of second deed of trust from the real property, contrary to Debtor's arguments. A request to determine the extent, validity, or priority of a security interest, or a request to avoid a lien, requires adversary proceeding. Fed. R. Bankr. P. 7001(2). The court cannot determine the extent, validity, or priority of the creditor's security interest through a motion. This portion of the requested relief is denied. If the creditor refuses to reconvey the security interest once the underling obligation has been satisfied, then the Debtor may bring an appropriate action.

This court has addressed the "lien strip" in a Chapter 13 case in several decisions, including *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013). The "lienstrip" occurs upon completion of the Plan and by operation of state law, not the 11 U.S.C. § 506(a) valuation.

Additionally, this Motion identifies the lien as being against the Debtors' principal residence, which brings into play the anti-modification provisions of 11 U.S.C. § 1322(b)(2). Further, the exemption stripping provisions of 11 U.S.C. § 522(f) are limited to judicial liens (on real or

personal property) or nonpossessory, nonpurchase-money security interests in specified personal property. Here, the lien of OneWest Bank is stated to be a mortgage, which is not a judicial lien.

EVIDENCE

Furthermore, no declaration was filed in support of the motion. Accordingly, the court has insufficient evidence to make any findings of fact or conclusions of law.

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company as Indenture Trustee of the Indymac Home Equity Mortgage Loan Asset-Backed Trust, Series 2006-H2, serviced by OneWest Bank, FSB opposed the motion to avoid lien. However, Creditor subsequently withdrew it's opposition before the hearing.

CONCLUSION

Based on the several deficiencies of the motion and supporting pleadings outlined above, 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 Avoid Lien filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Lien is denied without prejudice.

14. 12-38619-E-13 WILLIAM HARTICON
JLK-4 James L. Keenan

CONTINUED MOTION TO CONFIRM PLAN
7-25-13 [74]

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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

SERVICE

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

LOCAL RULE 2002-1
Notice Requirements

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

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

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

. . .

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

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

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

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

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

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

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

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

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

The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate. While counsel may want to argue, “hey, the Debtors provided for this claim so the IRS does not need to properly be served,” the court will not be drawn into a “sometimes we do and sometimes we don’t require parties to comply with notice rules.” That

will lead to the inevitable situation of a debtor completing five years of a plan and the Internal Revenue Service or Franchise Tax Board contending that the plan treatment was not proper, it still is owed a substantial amount of money, and the debtor (and possibly the debtor's counsel) left in tears after having funded a plan which could have properly paid the claim but did not because of the defective service.

On September 20, 2013, the Debtor filed a certificate of service for proper service on the Internal Revenue Service. Dckt. 91

TRUSTEE'S OPPOSITION

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

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

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

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

CONTINUANCE

The court continued the hearing to allow Debtor to file supplemental pleadings documenting his current income and expenses, properly serve the Internal Revenue Service and explain the changes made.

SUPPLEMENTAL PLEADINGS

Debtor filed a supplemental declaration providing that he increased several line item expenses made to more accurately estimate his actual living expenses. Debtor states the previous Schedule J was crafted in anticipation of higher housing costs, but those costs have been lowered through a mortgage modification and he can now build some of those savings back into his budget.

TRUSTEE'S RESPONSE

Trustee argues that Debtor's declaration does not aver what the current mortgage payment is, much less explain the Notice of Payment Change or where in the record proof or approval of a loan modification has occurred.

Trustee argues the Debtor's declaration offers no actual evidence in support of his current expenses and simply states that several items were increased in his amended schedule sin order to more accurately estimate actual living expenses. Trustee argues that the court should not find this second set of estimated figures credible without evidence of the actual expenses and an explanation why the prior estimates were in error.

DISCUSSION

The court agrees with the Trustee's concern. The Debtor has again not provided any evidence of the changing expenses and miraculously comes to the same plan payment as before. Instead of addressing each line item change, or providing actual evidence of his purported expenses (such as bills, statements, receipts), Debtor provides a blanket statement that "made to more accurately estimate his actual living expenses." This raises concerns of good faith on the part of the Debtors, which they should be prepared to address orally at the hearing. It appears that the Debtors are engaging in an outcome determinative computation of expenses and not accurately or truthfully providing testimony under penalty of perjury as to their real expenses.

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

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

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

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

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

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

15. 11-21021-E-13 GWENDOLYN BURNLEY
CYB-3 Candace Y. Brooks
MOTION TO APPROVE LOAN MODIFICATION
10-10-13 [64]

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, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(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 Approve the Loan Modification. 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:

Seterus, Inc., transferee and assignee of Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $1,367.00 to $943.90 (principal and interest) plus escrow payment of $239.51. So the combined payment will be $1,183.41. The modification will capitalize the pre-petition arrears and provides for interest rate of 4.000% over the next 40 years.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration and exhibit filed in this matter provides much of the

information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

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 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 are authorized to amend the terms of their loan with Seterus, Inc., transferee and assignee of Bank of America, N.A., which is secured by the real property commonly known as 1504 Lassen Ct, Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit “A,” Docket Entry No. 67, in support of the Motion.

16. 12-35521-E-13 CHRISTOPHER DEAN
RHS-1 Peter G. Macaluso

ORDER TO APPEAR AND SHOW CAUSE WHY COURT SHOULD NOT IMPOSE CORRECTIVE SANCTIONS FOR TESTIMONY PROCURED AND PRESENTED TO COURT
9-12-13 [116]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Debtor's Counsel, Chapter 13 Trustee, Counsel for Creditor San Francisco Credit Union, Creditor San Francisco Credit Union and all interested parties on September 13, 2013. 46 days notice of the hearing was provided.

No Tentative Ruling: 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:

BACKGROUND

On September 6, 2013, San Francisco Fire Credit Union filed the Declaration of Patricia Bracey in opposition to the Debtor's motion to confirm a Chapter 13 Plan. Dckt. 113. In her declaration Ms. Bracey testifies under penalty of perjury to the following:

A. She is employed as "a Bankruptcy Manager for Cenlar FSB 'Cenlar')."

B. Cenlar is a servicing agent for San Francisco Fire Credit Union ("SFFCU").

C. "I am one of the custodians of the books, records, files and banking records of [San Francisco Fire Credit Union] as those books, records, files and banking records pertain to the loan and extensions of credit by SFFCU to Christopher David Dean ('Debtor')."

D. "I have personally worked on said books records, files and banking records, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from SFFCU's business records, which were made at or about the time of the events which were recorded, and which are maintained in the ordinary course of SFFCU business."

E. "On or about January 12, 2005, Debtor, for valuable consideration, made, executed and delivered to SFFCU a Promissory Note in the principal sum of $312,000.00 (the 'Note')."

F. "On or about January 12, 2005, Debtor made, executed and delivered to SFFCU a Deed of Trust ('the Deed of Trust') granting SFFCU a security interest in [Real Property]..."

G. "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

The declaration provides no information as to how or why Ms. Bracey, an employee of Cenlar FSB, a loan servicer, is a custodian of records for San Francisco Fire Credit Union. No information or evidence has been provided by San Francisco Fire Credit Union that it has engaged Cenlar FSB and its employees to be the custodian of records for the credit union. The Declaration provides no information as to how or why Ms. Bracey has personal knowledge as to the promissory note, deed of trust, consideration, or conduct of the Debtor or San Francisco Fire Credit Union in January 2005.

The court issued an Order to Show Cause as to why San Francisco Fire Credit Union, Ms. Bracey, Cenlar FSB, and counsel for San Francisco Fire Credit Union should not be sanctioned for the "evidence" presented in support of the motion. The court reviewed in detail the basic Federal Rules of Evidence and what constitutes competent, admissible expert and non-expert witness testimony. Fed. R. Evid. 602 (personal knowledge required, non-expert witness), 701 (lay person opinion), 801 (hearsay definition), and 802 (inadmissible hearsay testimony); Order to Appear and Order to Show Cause, Dckt. 116.

Facial Defects in Testimony

In the Order to Appear and Order to Show Cause, the court identified basic defects in the allegedly personal knowledge testimony under penalty of perjury by Patricia Bracey. This testimony by Patricia Bracey, which was procured and presented by San Francisco Fire Credit Union, counsel for San Francisco Fire Credit Union, and Cenlar FSB, fails to provide the court with a basis for determining that Patricia Bracey had person knowledge of the statements made under penalty of perjury. Cast in the best light, Ms. Bracey could be saying that she does not have any knowledge, but is merely parroting what she is reading in documents which others have given her. If so, then the declaration prepared by and for these sophisticated creditors and counsel is troubling, in that it appears to have been constructed in a way to misled the court, Chapter 13 Trustee, U.S. Trustee, Debtor, Debtor's counsel, and creditors and create the illusion that Ms. Bracey was providing personal knowledge, competent testimony. Further, the declaration provides no basis for Ms. Bracey's testimony under penalty of perjury that she, an employee of Cenlar FSB, is the custodian of the "records books, records, files and banking records of [San Francisco Fire Credit Union] as those books, records, files and banking records pertain to the loan and extensions of credit by SFFCU to Christopher David Dean ('Debtor')."

The court determined that further hearings are required to afford Patricia Bracey, San Francisco Fire Credit Union, counsel for San Francisco Fire Credit Union, and Cenlar FSB to provide the court with the legal and factual basis upon which the testimony under penalty of perjury is proper.

ORDER TO APPEAR AND ORDER TO SHOW CAUSE

The court ordered the following persons and parties to appear before this court and provide responses to the following items:

a. San Francisco Fire Credit Union through one or more senior managers or officers with personal knowledge of how the books and records of San Francisco Fire Credit Union are maintained and who are the custodians of records for said credit union, and counsel for San Francisco Fire Credit Union.

b. Cenlar FSB through one or more senior managers or officers with personal knowledge of: (1) the employment or retention of Cenlar FSB or Patricia Bracey, an employee of Cenlar FSB, to serve as a custodian of records for San Francisco Fire Credit Union; and (2) how the books and records of San Francisco Fire Credit Union are maintained by Cenlar FSB, Patricia Bracey, or other officer, employee or other representative of Cenlar FSB. Said senior managers or officers shall also have personal knowledge of what other persons or entities for which Cenlar FSB is a custodian of records. Counsel for Cenlar FSB shall appear at the hearing.

c. Patricia Bracey, and counsel if she so chooses.

d. Robert P. Zahradka and a manager(s) or member(s) of Pite Duncan, LLC, attorneys for San Francisco Fire Credit Union, with personal knowledge of the training, guidelines, requirements, and information obtained for the preparation of declarations for persons identified as a custodian of records, and with knowledge of the preparation, approval, and filing of the declaration of Patricia Bracey in this case.

The court further ordered that Patricia Bracey shall provide the court with her further declaration, additional evidence, and other supporting pleadings as appropriate to support her testimony,

A. That she is a custodian of records for San Francisco Fire Credit Union. Such additional testimony, additional evidence, and other supporting pleadings shall specifically include,

1. Copies of all contracts, agreements, authorizations, or other documents, which existed prior to the August 30, 2013 declaration, by which Patricia Bracey bases her testimony that she is a custodian of records for San Francisco Fire Credit Union.

2. Documentation of any payments, benefits, or other compensation received from San Francisco Fire Credit Union for being a custodian of records for that credit union.

3. Copies of all instructions, polices, requirements, and other internal guidelines issued by San Francisco Creditor Union prior to August 30, 2013, to and used by Patricia Bracey to fulfill her obligations as a custodian of records for San Francisco Fire Credit Union.

4. An accounting of all declarations signed by Patricia Bracey since January 1, 2013, in which she testified in any bankruptcy court proceeding that she was a custodian of records for any person or entity other than Cenlar FSB. Such accounting shall identify the proceeding by case name and number, the court, the date of the declaration, the person or entity for whom Patricia Bracey testified that she was the custodian of records, and the testimony or other evidence provided with the declaration which supported her testimony that she was a custodian of records for such person or entity.

B. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that "On or about January 12, 2005, Debtor, for valuable consideration, made, executed and delivered to SFFCU a Promissory Note in the principal sum of $312,000.00 (the 'Note')."

C. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that "On or about January 12, 2005, Debtor made, executed and delivered to SFFCU a Deed of Trust ('the Deed of Trust') granting SFFCU a security interest in [Real Property]..."

The court also ordered that Cenlar FSB shall provide the court with declaration(s) by knowledgeable senior management or officer, additional evidence, and other supporting pleadings as appropriate to support the testimony of Patricia Bracey that she or Cenlar FSB, her employer, is a custodian of records for San Francisco Fire Credit Union, and that Patricia Bracey has personal knowledge for the testimony she provide with respect to the following.

A. That Patricia Bracey or Cenlar FSB, acting through its employee Patricia Bracey, is a custodian of records for San Francisco Fire Credit Union. Such additional testimony, additional evidence, and other supporting pleadings shall specifically include,

1. For the period January 1, 2013, to the date of filing pleadings pursuant to this order with the court, identify all contracts, agreements, authorizations, or other documents ("Custodian Documentation"), which existed prior to the August 30, 2013 declaration, by which Cenlar FSB supports the testimony of Patricia Bracey, its employee, that Patricia Bracey or Cenlar FSB was a custodian of records for San Francisco Fire Credit Union.

2. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that "On or about January 12, 2005, Debtor, for valuable consideration, made, executed and delivered to SFFCU a Promissory Note in the principal sum of $312,000.00 (the 'Note')."

3. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that "On or about January 12, 2005, Debtor made, executed and delivered to SFFCU

a Deed of Trust ('the Deed of Trust') granting SFFCU a security interest in [Real Property]..."

B. For the period January 1, 2013, to the date of filing pleadings pursuant to this order with the court, an accounting of all instructions, polices, requirements, and other internal guidelines (collectively "Guidelines") issued by any person or entity, other than Cenlar FSB, for which it has served as a custodian of records since San Francisco Creditor Union prior to August 30, 2013 to and used by Cenlar FSB, Patricia Bracey, or other employee, officer, or representative of Cenlar FSB, to fulfill his, her, or its obligations as a custodian of records. The accounting may be in the form of a list identifying (1) Cenlar FSB, its employee, officer, or represented served as a custodian of records for some other person or entity; (2) the person or entity for whom Cenlar FSB, its employee, officer, or represented served as a custodian of records; and (3) the Guidelines.

C. For the period January 1, 2013, to the date of filing pleadings pursuant to this order with the court, an accounting of all declarations executed by any employee, officer, or other representative of Cenlar FSB in which the employee, officer or other representative of Cenlar FSB testified in any bankruptcy court proceeding that Cenlar FSB, or employee, officer, or other representative Cenlar FSB was a custodian of records for any person or entity other than Cenlar FSB. Such accounting shall identify the proceeding by case name and number, the court, the date of the declaration, the employee, officer, or other representative of Cenlar FSB providing such testimony, the person or entity for whom the employee, officer, or other representative of Cenlar FSB testified that he, she or Cenlar FSB was the custodian of records, and the testimony or other evidence provided with the declaration which supported the testimony that he, she, or Cenlar FSB was a custodian of records for such other person or entity.

The court also ordered San Francisco First Credit Union to provide the court with declaration(s) by knowledgeable senior management, additional evidence, and other supporting pleadings as appropriate to support the testimony of Patricia Bracey under penalty of perjury that she is a custodian of records for San Francisco Fire Credit Union, and support the testimony of Patricia Bracey that she had personal knowledge for the testimony she provide with respect to the following.

A. That Patricia Bracey is a custodian of records for San Francisco Fire Credit Union. Such additional testimony, additional evidence, and other supporting pleadings shall specifically include,

1. Copies of all contracts, agreements, authorizations, or other documents, which existed prior to the August 30, 2013

declaration, by which Patricia Bracey bases her testimony that she is a custodian of records for San Francisco Fire Credit Union.

2. Documentation of any payments, benefits, or other compensation paid during the period January 1, 2013, to the date of filing the pleadings pursuant to this order by San Francisco Fire Credit Union to Patricia Bracey or Cenlar FSB for being a custodian of records for that credit union.

3. Copies of all instructions, polices, requirements, and other internal guidelines issued by San Francisco Creditor Union prior to August 30, 2013, to and used by Patricia Bracey or Cenlar FSB to fulfill her obligations as a custodian of records for San Francisco Fire Credit Union.

4. The employees and officers, if any, responsible for management or oversight of the performance of the duties of Patricia Bracey or Cenlar FSB as a custodian of records for San Francisco Fire Credit Union.

5. An accounting of all declarations signed by any person other than employees or officers of San Francisco Fire Credit Union during the period from January 1, 2013 in which any other person or entity, other than an employee or officer of San Francisco Fire Credit Union, testified in any bankruptcy court proceeding that he, she or it was a custodian of records for San Francisco Fire Credit Union. Such accounting shall identify the proceeding by case name and number, the court, the date of the declaration, the person other than an employee or officer of San Francisco Fire Credit Union was a custodian of records for San Francisco Fire Credit Union, and the testimony or other evidence provided with the declaration which supported such testimony.

B. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that “On or about January 12, 2005, Debtor, for valuable consideration, made, executed and delivered to SFFCU a Promissory Note in the principal sum of $312,000.00 (the ‘Note’).”

C. That Patricia Bracey had competent, admissible personal knowledge upon which she based her testimony that “On or about January 12, 2005, Debtor made, executed and delivered to SFFCU a Deed of Trust (‘the Deed of Trust’) granting SFFCU a security interest in [Real Property]...”

NOTICE OF POSSIBLE CORRECTIVE SANCTIONS

Additionally, the court ordered that San Francisco Fire Credit Union shall show cause why the court should not order the payment of $15,000.00 (10% of the claim its asserts, as testified to under penalty of perjury by Patricia Bracey, in this case) in corrective sanctions if:

A. It is determined that Patricia Bracey did not have personal knowledge for the testimony which San Francisco Fire Credit Union and its attorney presented to this court; or

B. It is determined that Patricia Bracey or Cenlar FSB was not a custodian of records for San Francisco Fire Credit Union as presented to the court.

The court also ordered that Cenlar FSB shall show cause why the court should not order the payment of $5,000.00 in corrective sanctions if:

A. It is determined that Patricia Bracey did not have personal knowledge for the testimony which San Francisco Fire Credit Union and its attorney presented to this court; or

B. It is determined that Patricia Bracey or Cenlar FSB was not a custodian of records for San Francisco Fire Credit Union as presented to the court.

The court also ordered that Pite Duncan, LLP, attorneys for San Francisco Fire Credit Union, shall show cause why the court should not order the payment of $5,000.00 in corrective sanctions if:

A. It is determined that Patricia Bracey did not have personal knowledge for the testimony which San Francisco Fire Credit Union and its attorney presented to this court; or

B. It is determined that Patricia Bracey was not a custodian of records for San Francisco Fire Credit Union as presented to the court.

Further, the court ordered the attorneys to show cause why the court should not certify a finding of either of the foregoing to the Chief Judge of the United State District Court for the Eastern District of California for the consideration of further corrective and punitive sanctions, including the suspension of the admission to practice law in the Eastern District of California for all attorneys who are employed by or partners of Pite Duncan, LLP for a period of not less than six months.

RESPONSES PRESENTED BY THE PARTIES

On October 16, 2013, Responses to the Order to Appear and Order to Show Cause were filed. These Responses provide the following information and explanations.

Declaration of Patricia Bracey

Ms. Bracey is the employee of Cenlar who provided her declaration as a custodian of records for San Francisco Fire Credit Union. Her testimony is summarized as follows.

A. She is a employed by Cenlar as a Bankruptcy Manager [which term is not defined or explained].

B. In that capacity, she has access to Cenlar’s books and records, including those books and records of Cenlar for which it serves as a loan servicer.

C. Ms. Bracey has reviewed the books and records of Cenlar, and therein located copies of the Note and Deed of Trust (the "Loan") which comprise the San Francisco Fire Credit Union claim in this bankruptcy case.

D. Ms. Bracey has personally reviewed the books and records of Cenlar.

E. Ms. Bracey has knowledge of how Cenlar maintains its books and records, including those relating to the servicing of loans by Cenlar.

F. Cenlar has a contract to service the Loan for San Francisco Fire Credit Union. A copy of the servicing agreement is filed as Exhibit A in the Response to the Order to Appear and Order to Show Cause.

G. Based on Cenlar having a contract to service the Loan, Ms. Bracey believed,

1. It was accurate for her to state under penalty of perjury that she was a custodian of records for San Francisco Fire Credit Union;

2. She did not intend to mislead the court;

3. She did not intend to mislead anyone to believe that she was an employee of San Francisco Fire Credit Union;

4. She did not intend to mislead anyone to believe that she was in custody of San Francisco Fire Credit Union original documents;

5. She only intended to convey that she had access to the books and records of Cenlar, who was acting as the loan servicer for San Francisco Fire Credit Union.

H. All of Ms. Bracey's testimony was based on the books and records of Cenlar.

I. Ms. Bracey did not intend to convey that she has personal knowledge of any of the Loan between the Debtors and San Francisco Fire Credit Union which occurred in 2005.

J. Cenlar has the following procedures for its employees in executing documents in connection with foreclosures and bankruptcy proceedings. These procedures include the following.

1. The Cenlar employee is to review the accuracy of all documents they sign on behalf of Cenlar.

2. The Cenlar employee may only sign documents in their capacity as an employee of Cenlar, not as an employee or any other entity.

3. When Cenlar acts as a loan servicer for another entity, the Cenlar employee must sign documents only in its capacity as an employee of Cenlar and disclose that Cenlar is acting only in a representative capacity.

K. Ms. Bracey has provided five other declarations in bankruptcy cases, all using what she describes as the mandatory Real Property Declaration in the Central District of California (Form 4001-1.RFS.RP.Motion). The testimony provided in those cases by Ms. Bracey states,

> I am one of the custodians of the books, records and files of Movant that pertain to loans and extensions of credit given to Debtor concerning the Property. I have personally worked on books. records and files. and as to the following facts. I know them 18 to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and bad or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

L. Ms. Bracey states that each declaration filed in the Central District included an attachment page, "wherein I clarified that I was executing the declarations in my capacity as an employee of Cenlar based on my review of Cenlar's books and records." FN.1.

FN.1. The attachment to the declaration in In re Powell, Bankr. C.D. Cal. 8:13-10493 discloses the following information,

1. Ms. Bracey is an employee of Cenlar.

2. She has access to Cenlar's books and records.

3. Cenlar services loans for Orange County Credit Union.

4. According to Cenlar's books and records, Ms. Bracey provides a description of loan documents, status of loan, and that Cenlar has retained counsel to represent it in the bankruptcy case.

The court notes that Cenlar is not the moving party in this case, but Orange County Credit Union has brought the motion and appears to be the party represented by counsel.

E. Ms. Bracey has now executed a "Corrective Declaration" in this case to minimize any confusion cause by the prior

> declaration. A copy of the "Corrective Declaration" is presented as Exhibit C in response.

Bracey Declaration, Dckt. 133.

The Declaration provided by Ms. Bracey exposes that (1) she knowingly signed the declaration in this case, and (2) that from the face of the declaration she had to know it was inaccurate. Though she states that Cenlar's policy is to make it clear that all testimony is done only as a Cenlar employee and in a representative capacity, Ms. Bracey stated under penalty of perjury that she was the custodian of records for San Francisco Fire Credit Union, not the custodian of records for Cenlar.

> "I am over 18 years of age and am employed as a Bankruptcy Manager for Cenlar FSB ("Cenlar"), servicing agent for San Francisco Fire Credit Union ("SFFCU"). In this capacity, **I am one of the custodians of the books, records, files and banking records of SFFCU**, as those books, records, files, and banking records pertain to loans and extensions of credit by San Francisco Fire Credit Union to Christopher David Dean ("Debtor"). **I have personally worked on said books, records, files and banking records** and, as to the following facts, know them to be true of my own knowledge or I have gained knowledge of them from **SFFCU's business records, which were made at or about the time of the events which were records, and which are maintained in the ordinary court of SFFCU business**."

Bracey Declaration, Dckt. 113 [emphasis added].

From this statement under penalty of perjury, Ms. Bracey clearly states,

A. She is employed as a Bankruptcy Manager for Cenlar.

B. She is a custodian of records for San Francisco Fire Credit Union [not a custodian of records for Cenlar, which has received copies of records from San Francisco Fire Credit Union].

C. She has personally worked on the books, records, files and banking records of San Francisco Fire Credit Union.

D. She personally knows how San Francisco Fire Credit Union maintains its business records, that they are made at or about the time of the events stated in the records, and that San Francisco Fire Credit Union maintains them in the ordinary course of business.

These statements are clearly false, not merely "confusing," as "clarified" by Ms. Bracey in her most recent declaration (Dckt. 133). In addition, Ms. Bracey's testimony as to how and the events of the Loan being made to the Debtor in 2005 are clearly not of her personal knowledge and falsely represent that she has any knowledge of such events. To the extent that Ms.

Bracey is merely parroting what she has read from the copies in the Cenlar books and records, she does not say that she has no knowledge of the events and is merely reading an exhibit for the court.

Ms. Bracey also directs the court to the Central District Bankruptcy Court mandatory form used for motions for relief from stay. Her declaration intimates an excuse of "I was only following what the Central District told me to do." Clearly, Ms. Bracey stating under penalty of perjury that she was the custodian of records for the creditors in those cases appears to be as false as what she has testified to in this case. While mandatory, such is not an excuse for falsely stating under penalty of perjury the information therein.

In reviewing the addition to the Central District Declarations, Ms. Bracey makes it clear that she has no personal knowledge as to any of the facts and that the documents being provided as exhibits do not come from the books and records of the movant (Orange County Credit Union). But her declaration also states,

A. She has personal knowledge of the matters set forth in the declaration;

B. She is a custodian of records for Orange County Credit Union;

C. She has personal knowledge as to how Orange County Credit Union maintains its books and records;

D. All documents, books, and records were prepared by Orange County Credit Union in the ordinary course of business for Orange County Credit Union;

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)".

Even if the written statements do not comply with 28 U.S.C. § 1746, such statements are considered made under penalty of perjury. *United States v. Murr*, 681 F.2d 246 (4th Cir. 1982). One who subscribes to false statement under penalty of perjury pursuant to 28 U.S.C. § 1746 may be charged with perjury under 18 U.S.C. § 1621, just as if statement were made under oath. *Dickinson v. Wainwright*, 626 F.2d 1184 (5th Cir. Fla. 1980).

At best, the attachment creates conflicting testimony under penalty of perjury.

The court is greatly concerned by Ms. Bracey attempting to justify why providing such incorrect testimony is proper and not intending to mislead the court. Instead, if she merely stated that she is not an attorney, she relies upon attorneys to advise her whether she is a custodian of records, and that she relied on the attorney with respect to how this was stated, such could have been a believable response. Instead, she states that she intentionally used the language that she believed it to be accurate, but that she did not intend to mislead the court in making those intentional, incorrect statements.

Declaration of James D. Scott - Cenlar FSB

James D. Scott provides the response to the Order to Appear and Order to Show Cause for Cenlar FSB. Mr. Scott's testimony is summarized as follows.

A. He is a Second Vice President with Cenlar.

B. He has knowledge concerning how Cenlar creates and maintains its business records.

C. He is responsible for overseeing the management and administration of Cenlar's late stage default loan servicing portfolio.

D. Cenlar and San Francisco Fire Credit Union entered into a loan servicing agreement.

E. San Francisco Fire Credit Union uploaded information relating to the loans being serviced by Cenlar.

F. Cenlar is to keep records for each loan being serviced, which records are the property of San Francisco Fire Credit Union.

G. Cenlar does not serve as a custodian of records for San Francisco Fire Credit Union.

H. There are no other agreements other than the Loan Servicing Agreement provided as Exhibit A in Response to the Order to Appear and Order to Show Cause.

I. Neither Cenlar nor Patricia Bracey were parties to the 2005 Loan transaction between the Debtor and San Francisco Fire Credit Union.

J. Any testimony provided by Cenlar would be based on information from Cenlar's records, and not personal knowledge of any Cenlar employee.

K. Cenlar has identified 1,355 declarations provided by Cenlar employees since January 1, 2013. That audit is ongoing, with Cenlar attempting to provide the full information by October 29, 2013.

L. Cenlar has identified at least eight declarations since January 1, 2013, in which Cenlar employees have stated that they were the custodian of records for another entity. [These are the same eight Central District of California cases identified by Patricia Bracey.]

Mr. Scott's Declaration is clear that Cenlar and its employees are not custodians of records for San Francisco Fire Credit Union or other entities for which Cenlar provides loan servicing. However, that Cenlar employees regularly apply declarations in the course of being a loan servicer.

Declaration of Richard Smith – San Francisco Fire Credit Union

Richard Smith provides his Declaration in response to the Order to Appear and Order to Show Cause. His testimony is summarized as follows.

A. Richard Smith is a Senior Vice President for San Francisco Fire Credit Union.

B. As Senior Vice President, Mr. Smith has access to the books and records of San Francisco Fire Credit Union, including those concerning the Loan transaction with the Debtor.

C. San Francisco Fire Credit Union entered into a loan servicing agreement with Cenlar. Under that Agreement, Exhibit 1 to the Response, San Francisco Fire Credit Union uploads information about the loans being service to Cenlar. The loan data is provided so that Cenlar can perform its duties as the loan servicer.

D. Cenlar is responsible for providing the loan servicing activities, including the collection of payments, and maintaining books and records concerning the loan servicing activities and the current status of the loan information.

E. Cenlar does not serve as a custodian of records for San Francisco Fire Credit Union. Since Cenlar does not serve as a custodian of records for San Francisco Fire Credit Union, then no compensation is paid to Cenlar for services as a custodian of records.

F. Other than the Loan Servicing Agreement, there are no other agreements between Cenlar and San Francisco Fire Credit Union.

G. San Francisco Fire Credit Union has no involvement in the hiring, training, or managing of the Cenlar employees who provide the loan servicing activities. Further, San Francisco Fire Credit Union officers and employees are not directly involved in overseeing or managing Cenlar in the exercise of its duties under the Servicing Agreement.

H. Neither Cenlar nor any of Cenlar's employees were parties to the 2005 loan transaction between the Debtor and San Francisco Fire Credit Union. At all times, San Francisco Fire Credit Union has maintained possession of the original Note and Deed of Trust upon which the claim in this case is based.

I. San Francisco Fire Credit Union did not review, nor had any knowledge of, the Declaration of Patricia Bracey filed in this case in support of San Francisco Fire Credit Union's objection to confirmation.

J. Based on a review of its records, the declaration in this case is the only instance that San Francisco Fire Credit Union is aware of Ms. Bracey stating or testifying that she is a custodian of records for San Francisco Fire Credit Union.

Mr. Smith's testimony is clear that Ms. Bracey and Cenlar have never been a custodian of records for San Francisco Fire Credit Union. Further, that Ms. Bracey and Cenlar had no personal knowledge of the 2005 Loan transaction. Finally, that Ms. Bracey was executing declarations purporting to speak on behalf of San Francisco Fire Credit Union about with the Credit Union had no knowledge or information as to the testimony she was providing. On this last point, San Francisco Fire Credit Union appears to have institutionalized a "assign it to counsel and forget it" business practice of litigating in federal court. Mr. Smith offers no explanation as to how it can be a creditor in a bankruptcy court, actively filing pleadings and seeking relief from the court, but be unaware of the pleadings it is filing (through its attorneys) in federal court.

Pite Duncan, LLP - Attorneys for San Francisco Fire Credit Union

Three declarations are provided by attorneys with Pite Duncan, LLP, the attorneys for San Francisco Fire Credit Union in this bankruptcy case.

Robert P. Zahradka

Robert P. Zahradka provides testimony as an associate attorney employed by Pite Duncan, LLP. Mr. Zahradka's testimony is summarized as follows.

A. Mr. Zahradka has been employed by Pite Duncan, LLP since June 1, 2012, when he passed the California State Bar exam. During the year prior to becoming an attorney, he worked as a law clerk for that firm.

B. Pite Duncan, LLP's bankruptcy department is organized into four teams – (1) Chapter 13 Proof of Claim Team, (2) Motions Team, (3) Chapter 11 Team, and (3) Adversary Team.

C. Currently, Mr. Zahradka is assigned to the Proof of Claim Team.

D. In mid-October 2012, Mr. Zahradka was assigned to the Proof of Claim team and received his own cases to manage.

E. Prior to mid-October 2012, for five months he assisted members of the Proof of Claim Team. This five month period, plus the year of serving as a law clerk, is deemed the training he was provided ("Training Period).

F. During the Training Period, Mr. Zahradka's direct supervising attorney was Casper J. Rankin. During the training period Mr. Zahradka's work was reviewed and critiqued by Mr. Rankin and senior associates on the Proof of Claim Team. In addition, Mr. Zahradka participated in strategy and educational meetings among the lawyers to discuss issues relating to the Proof of Claim Team cases.

G. Mr. Zahradka prepared Patricia Bracey's Declaration which is the subject of the Order to Appear and Order to Show Cause. This declaration was prepared from a "template" for declarations used by attorneys at Pite Duncan, LLP.

H. Mr. Zahradka states that when he used the Template he was not aware that it had not been updated.

I. Mr. Zahradka states that it was his "understanding" that Cenlar acts as a loan servicer for San Francisco Fire Credit Union. Because Cenlar acts as a loan servicer, Mr. Zahradka believed it was accurate to have Patricia Bracey state under penalty of perjury that Ms. Bracey was a custodian of records for San Francisco Fire Credit Union.

J. In making that statement, Mr. Zahradka intended only to state that Ms. Bracey was qualified to testify as to the records that Cenlar maintained for San Francisco Fire Credit Union. He further states that he did not intend to mislead the court or parties in interest that Ms. Bracey was a custodian of records for San Francisco Fire Credit Union.

K. All of the statements which Mr. Zahradka placed in the declaration for Ms. Bracey were based on information provided by Cenlar. He understood this information to be from Cenlar's business records.

L. He now understands that the declaration may not have "sufficiently explained" that Ms. Bracey did not have personal knowledge of the facts to which she testified to under penalty of perjury.

M. Mr. Zahradka states that his "good faith intentions" are shown by the declaration stating that Ms. Bracey is an employee of Cenlar.

Federal Rule of Bankruptcy Procedure 9011 provides that, by presenting a petition, pleading, written motion, or other paper to the court, an attorney or unrepresented party certifies that he or she has made a reasonable inquiry under the circumstances. The purpose of Rule 9011 is to deter baseless filings and avoid unnecessary judicial effort in order to make proceedings more expeditious and less costly. 10 COLLIER ON BANKRUPTCY ¶ 9011.01 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Rule 9011 requires that the parties certify in good faith that they have done their due diligence and research.

Rule 9011(b) places an affirmative duty on attorneys to make a reasonable investigation of the facts before signing and submitting any pleading or motion, thereby encouraging attorneys to "'think first and file later'." *Id.* ¶ 9011.04. The reasonableness of a position taken in a document presented to the court is to be determined in light of the situation existing and facts known at the time the pleading or motion was signed, filed, or presented. *Id.* However, the court may examine an attorney's post-filing actions to determine whether the attorney believed the claims asserted were reasonable when the document was filed. *Id.* An attorney's obligations for the contents of pleadings or motions filed are not measured only at the time they are filed or submitted to the court and the court may consider an attorney's actions after learning that the contents are without merit. *Id.*

As a starting point, the court does not believe that Mr. Zahradka is a bad attorney, dishonest person, or one who created a system by which false statements under penalty of perjury could and would be routinely stated. Rather, he is a newly minted attorney who was placed in a system created by the law firm employing him. That law firm provided him with Templates to use. Those templates are grossly inaccurate. He used the Templates of that law firm.

Further, while as a young attorney he may not have believed it was his place to restructure the procedures and business operations of Pite Duncan, LLP, he is still a licensed attorney in the State of California. Merely saying, "a partner gave me a form and I mindlessly filled it in" is not an acceptable response for a licensed attorney. On its face the declaration inaccurately states that Ms. Bracey (1) is the custodian of records for San Francisco Fire Credit Union and (2) that she has personal knowledge of events which occurred in 2005 (both of which are false). Mr.

Zahradka failed to make a reasonable investigation of the facts before submitting this document to the court or chose to ignore them.

Casper J. Rankin

Casper J. Rankin testifies that he is an associate attorney employed by Pite Duncan, LLP. His testimony is summarized as follows.

A. He testifies as to the four team structure of the Pite Duncan, LLP bankruptcy department.

B. Mr. Rankin supervises the Proof of Claim Team. As of October 1, 2013, there were 10 attorney members on this team, with experience ranging from 1 to 15 years.

C. For Mr. Zahradka, he was employed as a law clerk and then hired as an attorney. He initially worked for two senior attorneys, until October 2012, when he was assigned to the Proof of Claim Team.

D. The attorneys on the Proof of Claim Team generally have less experience in drafting declarations (which the court infers is based on the nature of that aspect of the representation provided by members of that team). In February 2013 Mr. Zahradka and the other members of the Proof of Claim Team participated in a training session on the use of declarations in Chapter 13 cases. This training included the requirements under the Federal Rules of Evidence for preparing declarations with competent testimony.

E. The Declaration of Patricia Bracey which was filed with the objection to confirmation was based on an "outdated" declaration template, which has now been replaced. Though available to Mr. Zahradka, that Template "no longer intended for use by Pite Duncan attorneys."

F. Pite Duncan has updated its Templates to more clearly describe the basis for a declarant's testimony.

G. Mr. Rankin has instructed the Proof of Claim Team to make sure they are using the current Templates. Further, that as attorneys, they must use their legal skills to make sure that the declarations are accurate and comply with the Federal Rules of Evidence.

David E. McAllister

David E. McAllister provides his testimony as a managing partner of Pite Duncan, LLP. His testimony is summarized as follows.

A. Mr. McAllister testifies as to the Team structure of the Pite Duncan, LLP law firm.

B. He further testifies that Pite Duncan, LLP maintains a data base of Templates, including declarations, to be used by the

attorneys. This data base of Templates is maintained to (1) increase efficiency, (2) reduce the risk of error, and (3) insure continuity within the different teams in the bankruptcy department.

C. Attorneys at Pite Duncan, LLP are instructed to use the Templates "only as the starting point in drafting" the documents. The Templates are to be modified to accurately state the facts being stated therein.

D. Pite Duncan, LLP routinely updates its Templates to address the every changing law, regulatory guidelines, and client requirements. He states that the majority of the declarations are the product of a collaboration of Pite Duncan, LLP, its clients, and some national counsel for the clients.

E. Mr. McAllister testifies that the Templates were "carefully reviewed and scrutinized to ensure the accuracy of both the standardized and variable, case specific information included in the declaration."

F. Mr. McAllister testifies that he personally reviewed and approved the Template used for the Patricia Bracey declaration.

G. Mr. McAllister testifies that he did not review the Patricia Bracey declaration before it was filed. He now confirms that the declaration "was prepared using an outdated Template which was no longer intended for use by attorneys in the Bankruptcy Department."

H. Upon discovering this outdated template, Pite Duncan, LLP took immediate steps to ensure that it was removed from the Template data base.

DISCUSSION

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

A Bankruptcy Court is also empowered to regulate the practice of law before it. *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 to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); *see also Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to 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 court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

The court appreciates the testimony provided by each of the attorneys. The transition from representing a client to having provide testimony as a party is never easy. While the court appreciates the candor of the testimony, it raises several serious issues concerning the practices of this law firm.

First, the testimony is that the form used for the Patricia Bracey declaration was "outdated" and not intended to be used by the attorneys at Pite Duncan, LLP. Mr. McAllister testifies that Pite Duncan, LLP routinely reviews and updates its Templates. So, the court has to question that if Pite Duncan, LLP had determined that the Template used was outdated and not to be used by the attorneys, why was the Template in the data base for attorneys to use? The testimony of the attorneys is internally inconsistent.

Second, the court cannot see any basis for attorneys, especially when the Templates are stated to be prepared after thorough review (including with clients and national law firms for clients), revisions, and updates, that the boilerplate testimony that a loan servicer is the custodian of records could ever be considered proper. This Template, from inception, was fundamentally flawed and inaccurate.

Federal Rule of Evidence 803(6) governs the business records exception to the hearsay rule of records other than police reports. Rule 803(6) explicitly requires proponent of document to produce custodian of record or other qualified witness to testify that the offered document was kept in course of regularly conducted business and that it was regular practice of business to make such document. *Tongil Co. v. Vessel "Hyundai Innovator"*, 968 F.2d 999, 1000 (9th Cir. 1992). The role of the custodian of records is straightforward.

Third, the Law Firm's Client is San Francisco Fire Credit Union, not Cenlar. The testimony from San Francisco Fire Credit Union is that it had no knowledge of Ms. Bracey making such representations and did not see the declaration in which she stated under penalty of perjury that she was a custodian of records for San Francisco Fire Credit Union. On the one hand San Francisco Fire Credit Union wants to be a party in the bankruptcy case and seek relief from the court, but on the other hand seeks a "pass" for what it did because it didn't know how it was prosecuting its claim in this case.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e). Rule 3-500 provides that a member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

The court is concerned that the Law Firm is filing documents without the client's knowledge or consent. This conduct raises serious issues with this court.

17. 11-41822-E-13 CAH-2 — MICHAEL/CAROLYN RANGEL — C. Anthony Hughes — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE — 9-11-13 [50]

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, Attorney fo respondent creditor and Office of the United States Trustee on September 11, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to sustain the Objection to Notice of Mortgage Payment Change and the Trustee is authorized to continue the mortgage payments of $2,265.00 as set forth in the confirmed 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:

Debtors object to the Notice of Mortgage Payment Change filed on July 24, 2013, increasing the on-going mortgage payments to JPMorgan Chase Bank, N.A. Debtors state their confirmed Chapter 13 plan, filed September 9, 2011, provides an ongoing monthly payment of $2,265.00 to be made by the Trustee with an attachment of a signed loan modification by JPMorgan Chase Bank, N.A. and Debtors. This loan modification was received in April 2011 (pre-bankruptcy) and Debtors have attached it as an exhibit.

On January 11, 2013, claim no. 14 was filed in this court by JPMorgan Chase Bank, N.A. Debtors state it does not recognize the prior loan modification with Debtors. Creditor JPMorgan Chase Bank, N.A. then filed a Notice of Mortgage Payment Change. Debtor states that on January 24, 2012, Tami Scholtz, Bankruptcy Manager of Alvarado & Associates, attorney for JPMorgan Chase Bank, N.A. sent a letter to the Trustee stating that Debtors are behind on their monthly mortgage payments and that the

actual monthly payment is $4,137.24 not $2,265.00. The Trustee responded he would not be able to comply with the creditor's request in increasing the monthly mortgage payment. Debtor argues that the Chapter 13 plan is binding on this creditor and they cannot change the terms of the plan through a Notice of Payment Change or now not recognize the loan modification.

DISCUSSION

The confirmed plan lists "Chase Mtg" on the Debtor's residence located at 12451 Rising Road, Wilton, California as a Class 1 Creditor. The additional provisions state that Debtors received a loan modification in March that was signed both by Debtors and Chase Bank, though Chase denies that the loan modification existed, and that Chase Bank refused to accept payments after the first tendered payment. No objection was made to the plan by JPMorgan Chase Bank, N.A. and an order confirming the plan was entered on November 11, 2011.

The dispute appears to be regarding the validity of the underlying loan modification agreement between Chase/JPMorgan Chase Bank, N.A. and Debtors. However, the court will not adjudicate rights under the underlying modification agreement without the proper proceedings before it. A request to determine the extent, validity, or priority of a security interest, or a request to avoid a lien, requires adversary proceeding. Fed. R. Bankr. P. 7001(2). Debtor cannot attempt the determine the extent, validity, or priority of the creditor's security interest through a plan provision or an objection to a notice of mortgage payment change.

The court notes that the plan, filed back in September 2011, states the dispute with Chase Bank (or JPMorgan Chase Bank, N.A.) regarding rights under a purported Loan Modification Agreement. However, no adversary proceeding to determine the respective parties rights has been filed to date.

Further, Chase Bank or JPMorgan Chase Bank, N.A. has not responded to the Motion, which makes their position unknown.

Based on the foregoing, the court will sustain the objection as to allow the Trustee to pay the lesser amount. However, the parties would be wise to move forward with a proper proceeding in order for the court to determine their respective rights.

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 Notice of Mortgage Payment Change 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 Objection is sustained and the Trustee is authorized to continue the mortgage payments of $2,265.00 as set forth in the confirmed plan, not the

$4,363.85 stated in the Notice of Mortgage Payment Change. The court makes no determination as to the correct amount of the mortgage payment or whether the loan has been modified by agreement of the parties.

18. 13-24924-E-13 JACQUELINE THOMPSON **MOTION TO MODIFY PLAN**
BLG-1 Pauldeep Bains **9-12-13 [38]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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 September 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.

19. 13-25926-E-13 DAO-3 GLENN/JACKIE LOWERY Dale A. Orthner CONTINUED MOTION TO CONFIRM PLAN 8-14-13 [47]

CONT. FROM 10-8-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 55 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 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. No appearance is required.

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee opposes confirmation offering evidence that the Debtor is $3,058.86 delinquent in plan payments, which represents multiple months of the $1,494.62.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Additionally, the Trustee states that the plan relies on a pending motion to value collateral, set for hearing September 24, 2013. Creditor

Pennymac Mortgage Investment Holdings, LLC, filed opposition to the motion and the court continued the hearing to October 22, 2013.

Debtor filed a response, stating they increased the plan payment from $1,425.80 to $1,494.62 in the current amended plan to make up for the two missed plan payments. Debtor states this will make up for the deficiency cited by the Trustee.

Debtor states the motion to value was continued and requests that this hearing be continued out in order for the motion to be resolved before confirmation.

CONTINUANCE

The court continued the hearing on the Motion to Confirm to follow the pending Motion to Value Collateral. However, the Motion to Value Collateral was withdrawn by Debtor and has not been refiled to date. Therefore, the pending plan is not confirmable.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that hearing on the Motion to Confirm the Plan is denied without prejudice.

20. 13-22028-E-13 FAITH EVANS
BLG-2 Bruce Charles Dwiggins

CONTINUED MOTION TO CONFIRM PLAN
7-25-13 [61]

CONT. FROM 9-24-13

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

PRIOR HEARING

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.

CONTINUANCE

The court continued the hearing to allow Debtor to file supplemental pleadings.

Debtor and her counsel filed a supplemental declaration stating that the order confirming Debtor's First Amended Plan will include special language that the Debtor shall file an adversary action within 120 days of this order to determine her interest in the liquor license listed on Schedule B of her filed petition.

The Trustee responded stating that based on the declaration with the proposed language to insert in the order confirming, he no longer opposes the Debtor's motion to confirm.

The Debtor having resolved the Trustee's concerns, 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 Motion to Confirm the Plan is Debtor's Chapter 13 Plan filed on July 25, 2013, as amended by the Debtor in her responses (Dckt. 80, 81) and to further provide that the sales proceeds shall be held by the Chapter 13 Trustee subject to further order of the court, 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. 13-29328-E-13 RANA DOMONDON — MOTION TO CONFIRM PLAN
RHM-1 Robert Hale McConnell — 8-23-13 [28]

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 23, 2013. By the court's calculation, 67 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 OBJECTION

The Trustee opposes confirmation offering evidence that the Debtor is $8,541.91.00 delinquent in plan payments, which represents multiple

months of the $4,657.22 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

CREDITOR'S OBJECTION

Creditor U.S. Bank, N.A. Trustee for BNC Mortgage Loan Trust 2006-1, Mortgage Pass through Certificates, Series 2006-1 opposes the Motion to Confirm. The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $171,904.14 in pre-petition arrears. The Plan does not propose to cure this amount of arrears. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrears, the plan cannot be confirmed.

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.

22. 13-25332-E-13 TIMOTHY/TRACI SHIELDS MOTION TO CONFIRM PLAN
DBJ-4 Douglas B. Jacobs 9-4-13 [66]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 55 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 September 4, 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.

23. 13-32434-E-13 ONA JOHNSON
RK-1 Steele Lanphier

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
9-26-13 [13]

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 the Debtor, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid a Judicial Lien was not served on David Cusick. Jan P. Johnson was served as the Chapter 13 Trustee. Therefore, the Motion was not properly served on the correct Chapter 13 Trustee. This is grounds to deny the motion.

If during the scheduled hearing, the Debtors can provide sufficient evidence that all parties of interest are correctly serviced, the court may alternatively make the following ruling:

A judgment was entered against the Debtor in favor of Portfolio Recovery Associates, LLC for the sum of $2,626.32. The abstract of judgment was recorded with Sacramento County on November 1, 2011. That lien attached to the Debtor's residential real property commonly known as 6109 Orsi Circle, Carmichael, California.

Avoiding Lien

Section 522(f) permits a debtor to wipe out the interest that a creditor has in particular property if the debtor's interest in that property would be exempt but for the existence of the creditor's lien or interest. 4 COLLIER ON BANKRUPTCY ¶ 522.11[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The debtor's avoiding power under this section is limited in that it may be employed "only to the extent that the lien impairs the debtor's exemption." 11 U.S.C. § 522(f). Further, only nonpossessory,

nonpurchase-money security interests in certain household goods, tools of the trade, and health aids are subject to avoidance under section 522(f)(1)(B), and judicial liens on otherwise exempt property are subject to avoidance under section 522(f)(1)(A).

In most jurisdictions, lien avoidance under § 522(f) in Chapter 13 cases can be accomplished in three steps: (1) Before confirmation of a plan, file a motion to avoid lien, serving the lienholder and the trustee; (2) provide in the plan for lien avoidance under § 522(f), with separate provision for payment of the resulting unsecured claim; and (3) claim an exemption on Schedule C to support the use of lien avoidance under § 522(f). Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 50.2, at ¶ 50.2, Sec. Rev. May 24, 2004, www.Ch13online.com.

The procedure for avoiding a lien under section 522(f) is set forth in Federal Rule of Bankruptcy Procedure 4003(d), following the motion proc3edures set forth in Rule 9014.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $144,000.00 as of the date of the petition. The unavoidable consensual liens total $202,500.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Portfolio Recovery Associates, LLC, Sacramento County Superior Court Case No. 34-2010-00061884, Book 20111101 Page 1585, recorded on November 1, 2011, with the Sacramento County Recorder, against the real property commonly known as 6109 Orsi Circle, Carmichael, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

24. 13-32434-E-13 ONA JOHNSON
RK-2 Steele Lanphier

MOTION TO AVOID LIEN OF RESURGENT CAPITAL SERVICES
9-26-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Resurgent Capital Services L.P. for the sum of $11,419.91. The abstract of judgment was recorded with Sacramento County on December 28, 2011. That lien attached to the Debtor's residential real property commonly known as 6109 Orsi Circle Carmichael, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's opinion reflected in the declaration, the subject real property has an approximate value of $144,000 as of the date of the petition. The unavoidable consensual liens total $202,500 on that same date according to Debtor's declaration. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(b)(1) in the amount of $1,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Capital Services L.P., Sacramento County Superior Court Case No. 34-2009-00043999, recorded on December 28, 2011 with the Sacramento County Recorder, (Book 20111228 Page 0600), against the real property commonly known as 6109 Orsi Circle Carmichael, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

25. 13-32434-E-13 ONA JOHNSON
RK-3 Steele Lanphier

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE, N.A.
9-26-13 [18]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 6109 Orsi Circle, Carmichael, California. The Debtor seeks to value the property at a fair market value of $144,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R.

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

The first deed of trust secures a loan with a balance of approximately $202,500. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $18,002. 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 JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6109 Orsi Circle, Carmichael, 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 $144,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

26. 12-33944-E-13 SLH-2 PHILIP/JENNIFER HOLLENBACH Seth L. Hanson

CONTINUED MOTION TO MODIFY PLAN 8-13-13 [60]

CONT. FROM 9-24-13

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, 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 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:

PRIOR HEARING

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

CONTINUANCE

The court continued the hearing to allow Debtors to file supplemental pleadings.

On October 11, 2013, Debtors filed supplemental provisions to the First Modified Plan, providing language to replace 6.02 fo the additional provisions and providing that Plan payments for month 13 (August 2013) and month 14 (September 2013) will be $671.95; Plan payments for month 15 (October 2013) through month 31 (February 2015) will be $1,311.75; and Plan payments for month 32 (March 2015) through month 60 will be $2,048.47. Response, Dckt. 73. Debtors state this results from debtors decreasing their retirement contributions by $639.80 so they are contributing only 6% of their projected income and the second increase in plan payments will take place when debtor's retirement loan has been paid off in full. Though some of the other expenses listed by the Debtors may be questionable, there being no further opposition from the Trustee, the court finds that these are substantial amendments to provide for payment of creditor claims.

The Debtors have addressed the Trustee's objection based on computation of the projected disposable income.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The modified Plan, as amended Dckts. 72, 73, 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 First Modified Chapter 13 Plan filed on August 13, 2013, as amended in the responses filed by the Debtors (Dckt. 73) is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. 10-48648-E-13 LENOR NUNEZ
PLC-4 Peter L. Cianchetta

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
9-27-13 [42]

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 September 25, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has been 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 failed to serve JPMorgan Chase Bank, N.A. at an address recognized by the FDIC or California Secretary of State. The court is unable to determine if JPMorgan Chase Bank, N.A. was properly served at the 3415 Vision Drive ATTN: OH 4-7133, Columbus, Ohio address provided by Debtor. Incorrect service is sufficient basis to deny the motion. The court cannot determine that service was properly made as required by Federal Rule of Bankruptcy Procedure 7004(h) on this federally insured financial institution.

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

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

28. 13-21349-E-13 REGINALD/TONE SCARBROUGH MOTION TO CONFIRM PLAN
ET-8 Matthew R. Eason 9-16-13 [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 September 16, 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 June 3, 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.

29. 13-24250-E-13 MATTHEW/CLARA SWIFT — MOTION TO VALUE COLLATERAL OF IRWIN HOME EQUITY CORPORATION
RSG-4 Robert S. Gimblin — 9-25-13 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 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 1058 Broadway Street, Olivehurst, California. The Debtor seeks to value the property at a fair market value of $103,000.00 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 $196,004.00. Irwin Home Equity Corporation's second deed of trust secures a loan with a balance of approximately $82,623.00. 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 Irwin Home Equity Corporation secured by a second deed of trust recorded against the real property commonly known as 1058 Broadway Street, Olivehurst, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $103,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

30. 13-27960-E-13 DARRELL/JOYCE WOLTKAMP MOTION TO CONFIRM PLAN
LRR-1 Len ReidReynoso 9-12-13 [31]

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 September 12, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee objects to the proposed plan on the basis that the motion and the plan conflict. Debtor's motion and declaration both indicate that the percentage to be paid to unsecured creditors is 17% while the plan filed September 12, 2013 states that unsecured creditors shall receive no less than 8%. The Trustee also notes that Class 2A of the plan lists two debts for Mokelumne Federal Credit Union on a travel trailer and a

Dodge Ram but does not indicate if these debts are to be treated as purchase money security interest.

Debtor responds, stating that the unsecured creditors shall receive 17% and that the correct amount can be provided for in the order confirming. Debtors also state that the travel trailer should be treated as a purchase money security interest but the Dodge Ram should not.

Trustee replies, arguing that according to his calculations, the plan will take 70 months to complete at 17% to unsecured creditors. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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

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

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

31. 13-31261-E-13 TUESDIA JOHNSON **AMENDED MOTION TO APPROVE LOAN**
MMM-1 Mohammad M. Mokarram **MODIFICATION**
10-8-13 [22]

CONT. FROM 10-08-13

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

Correct Notice Was Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. The creditor was not served the Motion and supporting pleadings.

No Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(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.

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

PRIOR HEARING

The court continued the hearing on the Motion to Approve the Loan Modification to 3:00 p.m. on October 29, 2013 because of issues related to notice, evidence, and the motion. The court also ordered Wells Fargo Bank, N.A. to file with the court a copy of the Loan Modification Agreement, which it intends to have the Debtor signed and wants approved by the court.

CONTINUANCE

Notice

The supplemental Proof of Service states that the Motion and supporting pleadings were served on all Creditor, parties requesting special notice, Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Motion

The amended motion sets forth sufficient basis for loan modification. Wells Fargo, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $1,416.46 (includes escrow payment). The modification will capitalize the pre-petition arrears and provides for interest rate at 4.125% until October 1, 2053.

Evidence

However, Debtor failed to provide a copy of the Loan Modification Agreement as required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). It is not clear if the Wells Fargo Bank, N.A. did not provide a copy of the Loan Modification to counsel for the Debtor on or before October 15, 2013 or if the Counsel for the Debtor did not file and serve on the Chapter 13 Trustee the copy of the Loan Modification Agreement on or before October 17, 2013.

32. 12-36378-E-13 MARILYN/JOSHUA JOHNSON
PGM-5 Peter G. Macaluso
CONTINUED MOTION TO APPROVE LOAN MODIFICATION
8-9-13 [134]

CONT. FROM 9-10-13 & 10-08-13

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

09-10-13 PRIOR HEARING

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

However, the Motion failed to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), as it failed to provide a copy of the credit

agreement. The Exhibit A attached to the Motion is a copy of the letter with a summary of the proposed terms of the modification agreement. This is insufficient. FN.1.

FN.1 This is not merely a trial loan modification for which a future loan modification motion will be required. Here the court, Chapter 13 Trustee, U.S. Trustee, and creditors are deprived of seeing the actual Loan Modification Agreement and terms which are to be approved. While the court does not have a reason to believe that Wells Fargo Bank, N.A. is trying to hide something from the court, the Rules are equally and fairly applied to all parties. It does not require one to have much of an imagination as to how less scrupulous parties could attempt to mislead the court and consumer by hiding the actual agreement and what that less scrupulous creditor would describe as "mere standard, boilerplate terms that really should mean nothing to the consumer or court."

10-08-13 PRIOR HEARING

The court continued the hearing to allow the Debtor to provide the Loan Modification.

Debtor filed a supplemental declaration stating that they have only been provided the two pages from Wells Fargo describing the terms of the modification. Debtor asserts that Wells Fargo will not send out the full loan modification until the court grants permission.

Wells Fargo Bank, N.A. may chose to engage in it businesses practices as it determines is consistent with good faith dealings with its clients and shareholders, and complies with applicable law. The Debtors' declaration indicates that the choice of business practices includes not providing the court with copies of the actual credit agreements which the Bank seeks to have debtors enter into and the court approve. The court, blinded by the non-disclosure of the credit agreement, cannot grant the motion and approve the loan modification.

From the information letter issued by Wells Fargo Bank, N.A., Exhibit A, the Bank states,

A. Certain identified term changes,

B. The Debtor is instructed to "file a petition with the bankruptcy court to gain their consent to modify the first mortgage."

C. "Your client [the Debtor] will need to continue to make their trial period payments if applicable while we are waiting for consent from the court."

D. Once received [written consent], we will send the loan documents to you and your attorney for original signatures."

The court previously approved the trial loan modification, authorizing . Order, Dckt. 116. Trial modification payments are in the amount of $2,320.66. Exhibit A, Dckt. 98.

CONTINUANCE

The court issued an order providing the "court's consent" and order for Wells Facto Bank, N.A. to file (1) a Response to the motion explaining why the actual credit agreement cannot be produced for the court, and (2) to file a copy of the credit agreement which Wells Fargo Bank, N.A. wants the court to approve for the loan modification.

No response has been filed to date.

33. 13-29462-E-13 JOHN LONG
DPR-1 David P. Ritzinger
MOTION TO VALUE COLLATERAL OF BOSCO CREDIT, LLC
9-27-13 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 766 Arabian Circle, Vacaville, California. The Debtor seeks to value the property at a fair market value of $320,000.00 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 $327,536.00. Bosco Credit, LLC's second deed of trust secures a loan with a balance of approximately $63,021.00. 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 Bosco Credit, LLC secured by a second deed of trust recorded against the real property commonly known as 766 Arabian Circle, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $320,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

34. 13-29462-E-13 JOHN LONG
NLE-1 David P. Ritzinger

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-4-13 [21]

CONT. FROM 10-8-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 4, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that 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. However, the Debtor did appear at the continued Meeting of Creditors. See September 26, 2013 Docket Entry, Trustee's Report at 341 Meeting.

The Trustee opposes confirmation offering evidence that the Debtor is $840.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Additionally, the Trustee argues that Debtor's plan may not be his best effort because Debtor did not report all his income. Trustee states Debtor provided him with business documents, including a profit and loss statement for July 2013. This shows Debtor's income of $25,787.17 with only $14,043.55 in expenses and $11,743.62 in profit for the month. Trustee states Debtor has not provided any other statements or a breakdown of the expenses. Debtor reported income from his business of $21,631 and expenses of $19,313.

The Trustee also argues that his is unable to determine the feasibility of the plan, as Debtor failed to provide a business budget detailing the business income and expenses.

Lastly, the Trustee states the Debtor has failed to file a motion to value collateral of Franklin Credit Union, as proposed in the pending plan.

DEBTOR'S RESPONSE

Counsel for Debtor states that while he failed to attend the first 341 meeting, he did attend the continued hearing on September 26, 2013. Counsel also states that Debtor has brought all plan payments current. Counsel also contends that Debtor provided the Trustee with other monthly profit and loss statements, showing that the income varies widely from month to month. Counsel also states that Debtor filed a Business Income and Expense form with the Trustee.

Counsel also states that a Motion to Value Collateral has been filed and is set to be heard on October 29, 2013.

CONTINUANCE

The court continued this hearing to be heard with the Motion to Value, allowing the Trustee additional time to review the documents allegedly forwarded to them by the Debtor.

No additional documents or pleadings have been filed to date. The court does not have evidence before it that the Debtor is in fact current on the plan payments. Furthermore, the Debtor has not provided any evidence of his varied income to support the figures provided in the proposed plan. Therefore, the Objection 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to confirmation the Plan is sustained and the plan is not confirmed.

35. 12-23164-E-13 DOROTHEA SARANTIS **MOTION TO SELL**
RLG-2 Kaushik Ranchod **9-30-13 [24]**

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 September 30, 2013. By the court's calculation, 29 days' notice was provided. 21 days' notice is required.

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

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

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

Here, the Debtor proposes to sell the real property commonly known as 5021 Priscilla Lane, Sacramento, California. The sales price is $100,000.00 and the named buyer is Zachary Feuerbach. The terms are set forth in the Purchase Agreement, filed as Exhibit 2 in support of the Motion. Dckt. 27.

Trustee has filed a statement of non-opposition.

Creditor HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates, Series 2007-PA3 submitted a conditional non-opposition to Debtor's Motion, requesting that additional provisions be added to the order. The court will not include additional language that re-states the parties rights.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that Debtor Dorethea Mae Sarantis, ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b)to Zachary Feuerbach or nominee ("Buyer"), the residential real property commonly known as 5021 Priscilla Lane, Sacramento, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for $100,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit 2 in support of the Motion. Dckt. 27.

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

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

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

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

36. 13-31164-E-13 JANET LEMERE
NLE-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-3-13 [18]

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 October 3, 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 efforts. Debtor is above median income and claims disposable income is -$798.31. The Trustee notes the Debtor claims continued contributions to family members of $3,230.00, where no specific evidence has been filed proving this and Schedule J does not clearly show this expense. Debtor proposes a plan paying $455.00 per month for 60 months paying 0% to general unsecured claims.

Debtor and her non-fling spouse are paying three (3) auto loans and 1 auto lease outside the plan; two will be paid off during the life of the plan. Debtor's non-filing spouse has an auto loan with Chase for a 2005 Toyota Celica GT, which Debtor states is her daughter's car. Debtor's non filing spouse also has an auto loan with Golden One for a 2007 Ford Expedition which Debtor states is her son's car. Trustee argues that the plan should increase by the amount of each auto payment upon payoff off of each respective loan.

Debtor responds, stating that she is not opposed to the Trustee's request of increasing the monthly payment in six months by $475.00 per month and then $250.00 per month in 32 months.

Schedule J Computes the Debtors' Monthly Net Income as follows.

Mortgage, Insurance, Taxes	($2,265)
Electricity and Heat	($250)
Water and Sewer	($250)
Telephone	($15)
Cell Phone	($240)
Cable, Internet	($167)
Garbage	($31)
Home Maintenance	($100)
Food	($600)
Clothing	($75)
Laundry	($110)
Medical and Dental	($169)
Transportation	($500)
Recreation	($57)
Charitable	($100)
Health Insurance	($23)
Auto Insurance	($343)
Lease - 3rd Car	($397)
Car Payments	($965)
Personal Care	($50)
Pet Care	($130)
Non-Filing Spouse's Unsecured Debt	($1,000)
Storage	($75)
Total Expenses	($7,912)

Schedule J, Dckt. 11 at 25-26.

The Debtors list one dependant, a 20 year old son who is a student. No income is shown for the son. The Debtors provide the following income and deduction information.

Income (Deduction)	Debtor	Co-Debtor
Gross Income	$5,290	$5,978
Payroll Taxes and Social	($1,113)	($1,264)
Payroll Taxes and Social Security as Percentage of Gross Income	21.04%	21.14%
Health		($471)
Vehicle		($40)
Medical Contribution		($23)
Average Monthly Income	$4,177	$4,180
Combined Month Income	$8,357	

Based on Schedule J, the Debtor's Monthly Net Income is $445.00. The proposed plan provides for paying $445.00 for 60 months. Missing from the financial equation is what contribution is being made (presumably by the adult son who is a student) for the third car.

Also, the Debtors divert $1,000.00 a month of the Average Monthly Income to pay $30,000.00 of debts of the non-debtor spouse. This appears to be part of the $3,230.00 a month in payments for family members referenced by the Trustee as contributions to family members.

These over-median income debtors are able to eek out a 0.00% dividend to creditors with unsecured claims, while paying $1,000.00 a month of their income for debts outside of the bankruptcy case, a $397.00 lease of a third car, and $965 in car payments. The cars listed on Schedule B (Dckt. 11 at 14) are,

A. 2005 Toyota Celica, 101k Miles.....$1.00 Value

B. 2007 Ford Expedition, 90k Miles.....$7,000 Value

C. 2007 Infiniti g35, 142k Miles.....$9,800 Value

On Schedule D there are no secured claims listed. Dckt. 11 at 17. The only Lease listed on Schedule G is for the non-filing spouse's 2013 Infiniti. Dckt. 11 at 21.

Based on the Schedules and Plan, there are no claims secured by vehicles to be paid by the Debtors. However, on Schedule J the Debtor lists $965.00 in vehicle installment payments – in addition to the $395.00 a month lease payment.

Due to the inconsistent and incomplete information, the Debtor has not addressed the Trustee's concerns, the court overrules the objection. The court cannot intelligently consider a proposal to increase payments by $475.00 a month 7 and then an additional $250.00 a month in month 28 for vehicle payments for creditors not listed on the Schedules.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and Debtor's Chapter 13 Plan filed on August 28, 2013 is not confirmed.

37. 09-37979-E-13 MAURILIO/MINDA PEREZ — MOTION TO MODIFY PLAN
CLH-6 Cindy Lee Hill — 9-23-13 [88]

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 September 24, 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:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee objects to the proposed plan on the basis that the plan will complete in more than the 55 months proposed, possibly taking 64 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee states the over extension is due to the increase in percentage to unsecured creditors from 2% to 15%.

Trustee also states that the commitment period under the confirmed plan is 55 months, although Debtor's Means Test filed September 8, 2009 indicates Debtor is above median income and the commitment period should be 5 years.

The Trustee also argues that the Debtor's Declaration does not sufficiently explain the numerous changes in their expenses as depicted in the revised Schedules I and J attached to the Declaration. Debtor's declaration states that Mr. Perez received a small raise, but energy increases and vehicle expenses consumed the increase.

The Trustee notes the following unexplained changes in expenses:

Electricity/Heating	$150.00 to $250.00	$100.00 increase
Water/Sewer	$35.00 to $38.00	$3.00 increase
Telephone	$ 63.00 to $78.00	$15.00 increase
Garbage	$ 53.00 to $25.00	$28.00 decrease
Cell Phone	$110.00 to $257.00	$147.00 increase

Sewer	$ 41.50 to $51.00	$9.50 increase
Home Maintenance	$ 50.00 to $75.00	$25.00 increase
Clothing	$ 50.00 to $ 75.00	$25.00 increase
Medical/Dental	$166.00 to $290.00	$124.00 increase
Transportation	$360.00 to $330.00	$30.00 decrease
Recreation	$ 20.00 to $150.00	$130.00 increase
Charitable Cont.	$872.00 to $880.00	$8. 00 increase
Auto Insurance	$ 71.00 to $118.00	$47.00 increase
Pool Maintenance	$ 59.00 to $100.00	$41.00 increase

Based on the foregoing, 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.

38. 12-24180-E-13 JOJIE GOOSELAW MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 9-20-13 [126]

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 September 20, 2013. By the court's calculation, 39 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 September 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.

39. 11-30983-E-13 JAY/MARIBEL ASH MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 9-18-13 [55]

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 September 18, 2013. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. 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 grant the Motion to Confirm the Modified Plan, as amended. No appearance at the October 29, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the basis that Debtors are proposing to reduce the commitment period from 60 months to 36 months. According to Form B22C, Debtors are over median income and the applicable commitment period is 5 years.

The Trustee also states that the total amount of disbursed payments has not been authorized.

The Debtor responds, stating that they do authorize the payments sought by the Trustee and that they understand that the new state of the law requires Debtors over the median income a commitment period of 60 months.

The Debtors proposed the following amendments to the Proposed Modified Plan:

A. The Plan term is 60 months.

B. The payments to Wells Fargo Bank, N.A. in the amounts made by the Chapter 13 Trustee under the prior Confirmed Plan are authorized under the Modified Plan,

1. $26,970.11 for current contract payments;

2. $4,771.26 for pre-petition arrearge; and

3. $775.60 for post-petition arrearage; and

4. $100.00 late charge.

With these amendments, the Debtors have resolved the Trustee's Objections. As amended, the modified Plan complies with 11 U.S.C. §§ 1329, 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 September 18, 2013, as amended by the Debtors (Dckt. 67), 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.

40. 13-24587-E-13 MOHAMMED KHAN — **MOTION TO CONFIRM PLAN**
DCN-4 David Ndudim — **8-28-13 [74]**
CASE DISMISSED 9/5/13

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

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

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

41. 08-39094-E-13 VIVENCIO/MERCIA CARAGAY — MOTION TO CONFIRM POST PETITION DEFAULT
KMR-1 Scott A. CoBen — 10-9-13 [199]

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, and Office of the United States Trustee on October 9, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

Creditor Golden 1 Credit Union ("Movant") moves to confirm that Vivencio Caragay and Mercia Caragay ("Debtors") are not post-petition current based on the timely Response to Final Cure filed by Movant on July 2, 2013. Movant does not dispute that the pre-petition arrears of $15,396.68 have been paid in full. Movant requests an order confirming that Debtors are not current on post petition payments.

This bankruptcy case was commenced as a Chapter 7 bankruptcy on December 23, 2008. On March 25, 2009, the Debtors filed their election to convert the case to one under Chapter 13, 2013. Dckt. 24. The Debtors' First Amended Chapter 13 Plan, filed on July 2, 2009, requires payments of $2,900.00 a month for a period of 60 months. Dckt. 66. The First Amended Chapter 13 Plan was confirmed by order of the court filed on August 21, 2009. Dckt. 76.

The Debtors then filed their First Modified Plan on April 8, 2010. Dckt. 114. The First Modified Plan was confirmed by order filed on June 11, 2010.

The Debtors filed their Second Modified Plan on February 1, 2013. Dckt. 169. The Second Modified Plan was confirmed by order filed on April 15, 2013. Dckt. 185. Under the Second Modified Plan the following payments by the Debtors and distributions to creditors are required:

A. Debtor Plan Payments.

1. As of December 25, 2012, the Debtors have paid $100,966.36 into the Plan.

2. Beginning January 25, 2013 for the four remaining months of the Plan the Debtors shall make monthly payments of $2,700.00.

3. The Term of the Plan is 47 months.

B. Creditor Claim Payments

1. Class 1 Secured - Golden 1 Credit Union

a. Monthly Contract Payments.....$1,986.10
b. Monthly Arrearage Payments.....$ 497.00

(1) Amount of Arrearage...$1,750.00

2. Class 2 Secured - Countrywide

a. $0.00 value of secured claim....$0.00 Dividend

3. Class 3 Surrender of Collateral – None

4. Class 4, Direct Pay, Non-Defaulted Secured Claims

a. Countrywide (Daughter).....$1,573.35
b. Countrywide (Daughter).....$ 292.51
c. Toyota Motor Cr. (Son).....$ 326.77

5. Class 5 Priority Claims – None

6. Class 6 Designated Unsecured Claims – None

7. Class 7 General Unsecured Claims

a. Dividend.....0.00%
(1) $287,518 in claims

C. Section 6.02 – Additional Provisions

1. States that the “arrearage claim of Golden 1 Credit Union has been reduced in the amount of $713.00 due to the [Debtors] making a payment directly to Golden 1 Credit Union in the amount of $2,700.00.”

Movant asserts that the Debtors received its first post-petition payment on July 23, 2009. This was paid through the Chapter 13 Trustee, being received six months after the case was commenced.

Movant originally filed Proof of Claim Number 6 on August 28, 2009. Proof of Claim Number 6 asserted a secured claim in the amount of $183,993.83, for which the collateral was identified as 1450 Brewerton Dr., Sacramento, California. The pre-petition arrearage is identified as being in the amount of $14,251.40. The second page of Proof of Claim Number 6 lists the breakdown of the claim computation, showing 7 defaulted monthly payments for the period of June 2008 - December 2008. (This bankruptcy case was filed December 23, 2008.)

Movant filed an Amended Proof of Claim No. 8 in the amount of $185,139.11, showing pre-petition arrears of $15,369.68 through the filing date of December 23, 2013. The attachment shows the 7 pre-petition defaults in monthly payments. Payments and Notices for this Proof of Claim are to be sent to Dovenmuehle Mortgage, Inc.

On June 12, 2013, the Chapter 13 Trustee filed his Notice of Debtor of Completed Plan Payments and of Obligation to File Documents. Dckt. 186. The Trustee filed and served on Dovenmuehle Mortgage, Inc., for Golden 1 Credit Union Proof of Claim Number 8, the Notice of Final Cure Payment. Notice and Certificate of Service, Dckts. 187, 188. The Notice provides that within 21 days of service of the Notice, creditor must file and serve a supplement to the Proof of Service of whether it agrees that the Debtors have paid the amount necessary to cure the defaults and whether the Debtors are otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5). Fed. R. Bank. P. 3002.1(g).

On July 2, 2013, Movant filed a Response, stating that Movant agrees Debtors have paid the pre-petition claim arrearage in full, but asserts that the Debtors are in default for post-petition payments in the amount of $16,501.64. The Declaration of Edward J. Baldon (stating that he is an "authorized signer" for Golden 1 Credit Union) is provided with the Response. He states under penalty of perjury that the Debtors are $16,501.64 in default for the post-petition payments, with the payment due for November 1, 2012 and thereafter. FN.1.

FN.1. The Declaration of Mr. Baldon (whose handwriting is marginally legible and for which no typed name is provided by Golden 1 Credit Union counsel on the declaration) is somewhat cryptic as to his relationship to the Golden 1 Credit Union and his ability to provide testimony under penalty of perjury. His testimony includes the following under penalty of perjury,

A. He is "an Authorized Signer for Golden 1 Credit Union, its assignees and/or successor..."

B. He is familiar with the Deed of Trust and loan in favor of Golden 1 Credit Union, its assignees and/or successor.

C. He is familiar with the manner and procedures by which Golden 1 Credit Union, its assignees and/or successors obtain, prepare, and maintain their records.

D. He testifies that the records are obtained, prepared and maintained by employees or agent of Golden 1 Credit Union, its assignees and/or successors, as part of their regular business duties.

E. That Golden 1 Credit Union, its assignees and/or successors are in physical possession of the Promissory Note and Deed of Trust.

F. That the pre-petition arrearage owed by the Debtors to Golden 1 Credit Union, its assignees and/or successors has been cured.

G. The Debtors are delinquent in their post-petition payments to Golden 1 Credit Union, its assignees and/or successors in the amount of $16,501.64.

The court finds this testimony troubling and indicative of a declarant for hire. Mr. Baldon demonstrates that he has no knowledge of who the creditor is in this case or has personal knowledge of the subject matter of his declaration. He merely says that he is an "Authorized Signer" for Golden 1 Credit Union. That term is not defined and no power of attorney is presented. Further, he professes to testify that not only is he an "Authorized Signer" for Golden 1 Credit Union, but he will be in the future the "Authorized Signer" for whomever is assigned or succeeds to ownership of the Note. The court finds Mr. Baldon's declaration to not be credible and of little, if any, evidentiary value.

The third document filed with the Response from Golden 1 Credit Union is a ledger of payments on this debt. It shown no payments during the post-petition months of January 2009 through June 2009. While this is consistent with the statement in the Motion, given Mr. Baldon's compromised credibility, the court can give this little weight.

On August 19, 2013, the Notice of Filing Chapter 13 Trustee's Final Report and Account, with the deadline for filing objection thereto was filed and served. Notice and Certificate of Service, Dckts. 194, 195. No objections were filed thereto. On September 24, 2013, the Notice of Intent to Enter Discharge, with deadline to filing of objection thereto, were filed and served. Notice and Certificate of Service, Dckts. 197, 198.

No objections to the entry of discharge were filed. On October 15, 2013, the discharge for the Debtors was entered. Dckt. 203.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3002.1(g) requires Creditors to file a response to the Chapter 13 Trustee's Notice of Final Cure within 21 days after service of the notice indicating whether it agrees that the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments.

Here, Movant filed the required response, providing that Debtors were post-petition delinquent in the amount of $16,501.64 as of the date of

the response, July 2, 2013. Movant states that the main circumstances that continued to this post-petition default is that Debtors did not make any post-petition payments between the months of January 2009 and June 2009.

Movant anticipated Debtor or the Trustee would file a Determination of Final Cure and Payment but that they have not done so. Federal Rule of Bankruptcy Procedure 3002.1(h) provides that on motion of the debtor or trustee, filed within 21 days after service of the Notice of Final Cure Payment, for the court to determine that the final cure payment has been made by the debtor. No such motion was filed.

The Bankruptcy Code in § 1322(b)(5) provides that the Chapter 13 Plan may provide,

> (5) notwithstanding paragraph (2) of this subsection [anti-modification of debt secured only by the debtor's primary residence], provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;...

The Debtors' Second Modified Plan provides for the Golden 1 Credit Union Class 1 claim to be paid $1,986.10 a month [the then current contract amount] for the 46 months of the Plan. The Trustee reports that the case was completed on May 21, 2013. Counting back 46 months of payments, the Plan requires that Golden 1 Credit Union be paid its current post-petition monthly contract amount for the months of August 2009 through May 2013.

Complicating the situation is that on January 16, 2013, Movant filed a payment change notice related to its claim showing that the payment of $1,986.10 was increasing to $2,001.06 on 3/1/2013 due to a change in the escrow payment. However, Movant states the payment being sent from the Trustee's office to Movant in accordance with Debtors' confirmed plan did not increase. Trustee continued to send payments in the amount of $1,986.10 which also caused some additional delinquencies. While small, the difference adds to the computation complexity.

The Golden 1 Credit Union Response to Final Cure and Notice of Post-Petition Defaults was served on both the Debtors, Debtors' Counsel, and the Chapter 13 Trustee. Certificate of Service, July 2, 2013 Docket Entry, Supplement to Proof of Claim Number 8. No Motion was filed by either the Debtors or Trustee within the 21 day period provided in Federal Rule of Bankruptcy Procedure 3002.1(h).

Based on the limited evidence presented and the questionable credibility of Mr. Baldon's declaration, the court cannot make a determination as to specific amounts which may be in default post-petition. However, the Debtors not having challenged the July 2, 2013 Response to Final Cure and Notice of Post-Petition Defaults filed and served by Golden 1 Creditor Union, the court does find and determine that the completion of the Chapter 13 Plan, approval of the Chapter 13 Trustee's Final Accounting, and the entry of Discharge for the Debtors does not evidence or establish that the Debtors made all post-petition payments due Golden 1 Credit Union for

the Promissory Note upon which it makes its claim in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Post Petition Default filed by Creditor Golden 1 Credit Union 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. The Court finds and determines that the completion of the Chapter 13 Plan, approval of the Chapter 13 Trustee's Final Accounting, and the entry of Discharge for the Debtors does not evidence or establish that the Debtors made all post-petition payments due Golden 1 Credit Union for the Promissory Note upon which it makes its claim in this case, which is attached to Proof of Claim Number 8 filed in this bankruptcy case.

42.	**11-48695-E-13 JT-2**	**DALE GAGEL AND SUZANNE MAY John A. Tosney**	**OBJECTION TO CLAIM OF MARY BRYAN, CLAIM NUMBER 8 8-29-13 [37]**

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 61 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 continue the hearing on the Objection to Proof of Claim number 8 of Mary Bryan to xx:xx x.m. on _____, 201x. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 8 on the court's official claims registry, asserts $48,717.01 claim. The Debtor objects to the Proof of Claim on the basis that the claim stated it is both a secured and a priority claim, but that no evidence exists that it is either.

Debtors argue that the claim is not enforceable against the debtors as either a secured or a priority claim and should be classified as an unsecured debt. Debtor states that the proof of claim provides a entry of judgment and marital settlement agreement but that this does not purport to show that the amount owed is secured against any of the debtor's real or personal property. Debtor also argues that the money owed was the result of credit card payments that were never paid to the creditor by the Debtor and that a marital debt that is not "support" will be classified only as last-in-time-to-be-paid non-priority unsecured debt.

CREDITOR'S OPPOSITION

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

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

DISCUSSION

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

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

With respect to the contention that the claim is entitled to priority status, the situation has been made murky by the parties. 11 U.S.C. § 507(a)(1) allows first priority for allowed unsecured claims for domestic support obligations that as of the date of the filing of the petition are owed to or recoverable by a spouse, former spouse or child of the debtor. 11 U.S.C. § 101(14A) provides that a "domestic support

obligation" means a debt that accrues before, on or after the date of the order for relief, that is owed to a former spouse in the "nature of alimony, maintenance, or support...without regard to whether such debt is expressly so designated" of such former spouse.

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

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

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

> "1. Spousal Support:
>
> a. Spousal Support is reserved for purposes of enforcement of the payment of debt only, until debts are paid in full on April 30, 2011 (as set forth in Section 2.h.(i), the date of which is contingent on no missed payments."
>
> b. If necessary for payment of debts, any spousal support ordered shall be without tax consequences to either party.
>
> 2. Division of Property
>
> h. Equalization Payment:
>
> i. To equalize the payment of the community debts, beginning May 1, 2007, Husband shall pay to wife $825 per month ($412.50 on the 5th of the month and $412.50 on the 21st of the month) for a period of 48 months. This amount includes Husband's share of the community debt, Husband's separate debt and reimbursements owed to Wife. The last payment to

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

Proof of Claim Number 8, attachment.

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

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

The court orders the parties to proceed in state court to obtain the issuance or determination of the obligations of the parties and any spousal support obligation pursuant to paragraph 1 of the Judgment of Dissolution in California Superior Court, for the County of Sacramento, case no. 05FL08596. On or before **----------, 2013,** Mary Bryan shall file such motions or other proceedings to obtain a determination that the monetary obligations, or whatever portion there is so ordered by the State Court judge, is a "Spousal Support" obligation, and the necessary findings of fact and conclusions of law for this court to apply that determination to federal law in this bankruptcy case.

As the court is unable to interpret the meaning of spousal support as set forth in the judgment, the court will allow a continuance of 60-90 days for the parties to return to family court and have the judge retaining jurisdiction clarify the judgment.

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

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

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

IT IS ORDERED that the Objection to Claim is continued to **xx:xx x.m. on _____, 201x**.

43. 13-28099-E-13 MICHIE SCHMITZ
GAS-2 Geoffrey A. Sutliff

MOTION TO CONFIRM PLAN
9-13-13 [40]

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

Correct Notice Not Provided. Debtor failed to provide a proof of service. The court is unable to determine if service was proper.

Tentative Ruling: The Motion to Confirm the Plan has not been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

SERVICE

However, Debtor failed to file a proof of service. The court is unable to determine if service was proper.

TRUSTEE'S OPPOSITION

The Trustee objects to the Motion for several reasons. First, the Trustee states that proper notice was not provided. Debtor did not file a proof of serve and did not serve the motion or plan on all the parties.

Second, the Trustee opposes confirmation offering evidence that the Debtor is $206.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Third, the Debtor's plan relies on a pending motion to value collateral. The court having denied this motion, Debtor's plan is not confirmable.

Fourth, the Trustee states that the Debtors plan calls for payments of $3,296.00 for 60 months, but Debtor's declaration indicates that the plan is $3,296.00 for 58 months.

Fifth, the Trustee states that Debtor amended Schedule E to include IRS for disputed income tax from 2006 in the amount of $847,000.00. Debtor has not provided for treatment in the plan and the IRS has not filed a claim. The Debtor indicated on the Statement of Financial Affairs that the IRS recorded a tax lien in Placer County. The Trustee states he is unable to determine whether this claim is or will be a priority unsecured claim or if a portion of the claim should be provided for as a secured claim. Trustee states that if the debt is determined to be a priority unsecured claim, the Debtor may not be eligible for chapter 13 relief, as total unsecured claims would total $982,276.01. The unsecured debt limit is $383,175.00.

Based on the foregoing deficiencies, 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.

44. 13-28099-E-13 MICHIE SCHMITZ — MOTION TO VALUE COLLATERAL OF FLAGSTAR BANK
GAS-2 Geoffrey A. Sutliff — 9-13-13 [44]

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

Correct Notice Not Provided. Debtor failed to provide a proof of service. The court is unable to determine if service was proper.

Tentative Ruling: The Motion to Value Collateral has not been 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:

SERVICE

However, Debtor failed to file a proof of service. The court is unable to determine if service was proper upon the necessary parties.

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

EVIDENCE

In addition, Debtor failed to provide any evidence with the Motion to Value Collateral. While two declarations were filed under the same docket control number, Dckts. 42 and 43, the testimony goes to plan confirmation, not the value of the residence and the amount of the liens. The court does not have sufficient evidence before it to make any determinations of fact or conclusions of law regarding the Motion to Value Collateral of Flagstar Bank.

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.

45. 12-39437-E-13 JUDY BURGER **CONTINUED MOTION TO CONFIRM PLAN**
PGM-4 Peter G. Macaluso **6-21-13 [87]**

CONT. FROM 8-22-13, 8-6-13

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to xxxx the Motion to Confirm the Chapter 13 Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the motion on the grounds that the Debtor has not provided the Trustee with a complete Business Questionnaire and business documentation. The Trustee argues the Debtor has had more than sufficient time to provide the Trustee with these documents and has failed to do so. The Trustee states that he is unable to determine if the Debtor can afford the plan payments as Debtor has failed to provide any recent convincing evidence of the income of Debtor's business such as bank

statements, a copy of the estimated quarterly tax payment for January 15, 2013, or a statement of income and expenses.

The Trustee filed a supplemental objection, stating that Debtor provided three months of bank statements for two business accounts and a business profit and loss statement. The Trustee amends his objection to narrow the issues before the court.

First, the Trustee states that he has reviewed the profit and loss statements for "Law Office of Judy Burger, APC" and determined that the average income appears to be $22,468.69, which significantly exceeds the 2011 income reported on the Statement of Financial Affairs. The Trustee states the average expenses claimed by the Debtor appear to be $20,050.61, which shows an average profit of $2,334.73, which would be sufficient to make the plan payment if the Debtor had no personal expenses.

The Trustee also argues that there are some expenses that are extraordinary and some expenses which represent a reimbursement to the Debtor.

The Trustee also notes that the Debtor did not list bank accounts on Schedule B, but the bank statements received by the Trustee are for two accounts in the name of the Debtor's corporation.

The Trustee concludes that if the proposed profit and loss statements are accurate, they support the Debtor's ability to pay not only the current $2,050.00, and potentially an additional $1,218.07. The Trustee argues the bank statements need more explanation, including a declaration as to whether all income is put in these accounts, their usage, the extraordinary items and the ability to make payments.

Debtor responds, stating that the case is complex and the Trustee has required the Debtor to complete tax returns for the corporation for which she is a wage earner. The Debtor is currently waiting the for the CPA to complete the documentation that must be forwarded to the Trustee for review.

Debtor requested a continuance for 60 days in order to provide sufficient time for review and resolution of the remaining issues.

CONTINUED HEARING

The court continued the hearing to afford the Debtor the opportunity to have the tax returns completed and to provide the court and trustee with clear, properly authenticated evidence of the pre and post-petition finances and assets of the Debtor. By October 2013, this case will be closing in on being one-year old without a confirmed plan. To the extent that the financial information shows that a projected disposable income greater than that used by the Debtor to compute her plan payments to the Trustee, she shall include an explanation as to why such amount is higher and the location of the additional disposable income.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration stating that her income from the Law Corporation and the amount of profit and/or amount in the Corporate account varies. Debtor states based on the current trend of the Law Corporation, the plan payments could be increased to $2,650.00 ($600 per month) which would result in a small dividend to general unsecured creditors.

TRUSTEE'S REPLY

The Trustee maintains his objection, unless the plan payment is increased by $1,200.00 per month commencing with the next payment due October 25, 2013. The Trustee states that the increase of $600.00 is not sufficient based on his analysis set forth in the original objection.

Further, the Trustee argues that in the event Debtor is not willing to agree to the increased payment, the Trustee has a motion to dismiss currently set for hearing at the same time as this objection and believes the case should be dismissed or converted.

DEBTOR'S AND TRUSTEE'S SUPPLEMENTAL PLEADINGS

On September 24, 2013, the Debtor filed her supplemental declaration in support of confirmation. Dckt. 114. She states that she believes that the plan payments may be increased to $2,650.00 a month ($600 greater than in the proposed plan) beginning in October 25, 2013.

The Chapter 13 Trustee responds, stating that the Debtor's Supplemental Declaration states nothing more than that "I don't necessarily disagree with the Trustee's analysis," she provides no statement of what is an accurate analysis. Dckt. 116. While the Debtor states that she will pay an additional $600.00 a month into the plan, the Trustee's analysis (to which the Debtors "doesn't necessarily disagree") shows that the monthly payment needs to be increased by $1,200.00 a month. The Trustee closes by stating that if the Debtor does not amend the plan to increase the payments by $1,200.00 a month commencing with the October 2013 payment, the Trustee will argue that the court should dismiss the case pursuant to the separate motion to dismiss that is pending.

On October 15, 2013, the Debtor filed a further Supplemental Reply, stating,

> Debtor does not object to the increased payment by $1,200.00 per month starting October 25, 2013, the 11th month of the 60 months Plan.

Dckt. 118.

DISCUSSION

It appears that Debtor does not "disagree" with the Chapter 13 Trustee's analysis, and is willing to increase the plan payment by the $1,200 sought by the Trustee.

However, the court is concerned that the Debtor, who has an obligation to provide truthful and accurate statements of income and

expenses, has been negotiating payment amounts in this case through inaccurate and incomplete representations. When the Debtor stated in her September 12, 2013 declaration under penalty of perjury that the payment should be increased by only $600.00, was she stating in good faith under penalty of perjury that her projected disposable income was only $2,640.00 a month. See also, Fed. R. Bankr. P. 9011 certification in pleadings filed by counsel.

Twelve days after the Chapter 13 Trustee called the Debtor on understating her projected disposable income, the Debtor quickly recants, and says that she will pay $3,050.00 as her accurately computed projected disposable income. This causes the court concern as to the accuracy of the information provided by the Debtor and her good faith in proposing and prosecuting this Chapter 13 Plan.

The court continued the hearing one week to allow counsel for the Debtor and counsel for the Chapter 13 Trustee to consider what statements by the Debtor are accurate, what credibility the court can find in the various representations by the Debtor of projected disposable income, and whether, in light of these "negotiation representations" by the Debtor under penalty of perjury the court can find that the Debtor has and is prosecuting any plan in good faith in this case.

Further, the Debtors testimony causes the court to question how much projected disposable income has been diverted in the prior 11 months of this case. Rather than a belabored investigation, it may well be that dismissal of this Chapter 13 case and the Debtor filling a new case, with a clean slate, is the only way for this Debtor to file, prosecute, propose, and confirm a Chapter 13 plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 Chapter 13 Plan is xxxx.

46. 12-39437-E-13 JUDY BURGER **CONTINUED MOTION TO DISMISS**
TSB-2 Peter G. Macaluso **CASE**
5-29-13 [73]

CONT. FROM 8-22-13, 8-6-13, 6-26-13

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

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

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

PRIOR HEARING

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor's Opposition

Debtor argues that the court should deny the motion to dismiss because Debtor will file a new plan prior to the hearing. The Debtor offers no evidence in support of this argument for cause for why she cannot prosecute her case.

On June 21, 2013, the Debtor filed an amended plan and motion to confirm. Plan and Motion, Dckts. 81, 82. The Debtor's prior Chapter 13 case was dismissed by order filed on September 16, 2013, because of $23,051.94 in monetary defaults. Notice of Default and Order, Bankr. E.D. Cal. 09-41671 Dckts. 45, 48.

CONTINUANCE

The court continued the hearing on the Motion to Dismiss to follow the hearing on the Motion to Confirm.

The court xxxx the Motion to Confirm, xxxx.

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

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

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

IT IS ORDERED that the Motion to Dismiss is xxxx.

47. 13-28189-E-13 GG-3 TONY/MARGARITA CERVANTES Gerald B. Glazer

CONTINUED MOTION TO VALUE COLLATERAL OF MORTGAGE ELECTRONIC REGISTRATION SYSTEM 9-17-13 [46]

CONT. FROM 8-22-13

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 September 17, 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 xxx 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

Debtors seek to value the collateral of Mortgage Electronic Registration System ("MERS") as Nominee for RBS Citizens, N.A. and/or RBS Citizens, N.A.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4830 Silverado Street, Fair Oaks, California. The Debtor seeks to value the property at a fair market value of $306,944.00 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 $362,486.00. MERS as Nominee for RBS Citizens, N.A.'s second deed of trust secures a loan with a balance of approximately $23,479.75. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

This court can, and will, only enter an order adjudicating the rights or interests of parties who are named in the motion. The Motion states that the Debtor wants the court to determine rights of Mortgage Electronic Registration System ("MERS") as Nominee for RBS Citizens, N.A. an/or RBS Citizens, N.A. The court is unsure as to who or what is the target entity to have its claim valued. The court could interpret this request as only make a value determination as to MERS, for whatever interest it has, as a Nominee of RBS Citizens, N.A.

Further, the prayer only requests that the court determine a value for the real property, not determine the amount of a secured claim. If the court were to enter an order just determining the value of the property, the court is unsure as to what effect that would have on any specific creditor.

The hearing is continued to allow counsel to consider the parties to the motion and relief actually being requested. No further pleadings shall be filed in connection with this motion.

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 Motion is xxxx.