

# Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

**November 4, 2014 at 3:00 p.m.**

1. [14-28613](#)-E-13 JUSTINE MILES OBJECTION TO CONFIRMATION OF  
DPC-1 C. Anthony Hughes PLAN BY DAVID P. CUSICK  
10-8-14 [[21](#)]

**Tentative Ruling:** The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 8, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Schedule J Does Not Match Plan: The Debtor's plan is not the Debtor's best effort, 11 U.S.C. § 1325(b). The Debtor is above median income, and proposes a plan that pays \$1,468.00 for 60 months with 100% to the unsecured claims. Debtor's monthly net income listed on Schedule J totals \$4,162.99, which is \$2,694.99 more than the plan payment proposed at \$1,468.00 per month.
2. Where the plan is effective on confirmation and unsecured creditors are not paid in full on that date, interest appears required to pay the present value to unsecured claims.

Upon review of Debtor's petition and the filed Schedule J, the Trustee's objections are well-taken. 11 U.S.C. § 1325(b)(1) provides:

[i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Because of the Debtor is an above-median Debtor and does not provide for the full amount of Debtors' disposable income or pay interest to the unsecured creditors, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the David Cusick, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

2. [10-34819](#)-E-13 LA TANNA JONES  
SDB-2 Scott de Bie

MOTION TO VALUE COLLATERAL OF  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
10-1-14 [[49](#)]

**Final Ruling: No appearance at the November 4, 2014 hearing is required.**  
-----

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, Deutsche Bank National Trust Company, Specialized Loan Servicing, LLC, parties requesting special notice, and Office of the United States Trustee on October 1, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 non-responding parties 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 secured claim of Deutsche Bank National Trust Company ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by La Tanna Ray Jones ("Debtor") to value the secured claim of Deutsche Bank National Trust Company, as Indenture Trustee, on behalf of the Certificateholders of the Terwin Mortgage Trust 2006-8, Asset-backed Securities, Series 2006-8 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1020 Madrone Avenue, Vallejo, California, ("Property"). Debtor seeks to value the Property at a fair market value of \$342,500.00 as of the petition filing date. FN.1. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

-----  
FN.1. A Motion to Value order was obtained for this claim on September 7, 2010. Dckt. 34. Debtor has filed the current motion to ensure that Deutsche Bank National Trust Company is properly served. Debtor only served Deutsche Bank National Trust Company's loan servicer in the prior motion. Dckt. 20.  
-----

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **OPPOSITION**

Creditor has not filed an opposition.

#### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$612,170.00. Creditor's second deed of trust secures a claim with a balance of approximately \$116,909.35. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 La Tanna Ray Jones ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Deutsche Bank National Trust Company secured by a second in priority deed of trust recorded against the real property commonly known as 1020 Madrone Avenue, Vallejo, 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 \$342,500.00 and is encumbered by a senior lien securing a claim in the amount of \$612,170.00, which exceeds the value of the Property which is subject to Creditor's lien.

3. [09-23720](#)-E-13 **TERRENCE/LISA RICHARDSON**  
**WW-7** **Mark Wolff**

**CONTINUED MOTION TO DETERMINE  
THAT DEBTOR HAS CURED ALL  
DEFAULTS AND PAID ALL REQUIRED  
POST PETITION PAYMENTS  
8-29-14 [[150](#)]**

**Tentative Ruling:** The Motion to Determine that Debtor has Cured All Defaults and Paid All Required Post Petition Payments 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).

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Creditor's Counsel on August 29, 2014. However, the Debtors failed to serve the Chapter 13 Trustee. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Determine that Debtor has Cured All Defaults and Paid All Required Post Petition Payments 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 defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Determine that Debtor has Cured All Defaults and Paid All Required Post Petition Payments is denied without prejudice.**

Terrence and Lisa Richardson ("Debtors") filed the instant Motion to Determine that Debtor has Cured All Defaults and Paid All Required Post Petition Payments on August 29, 2014.

**MOTION**

Debtors filed the instant motion pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h) to determine whether the Debtors have cured all defaults and paid all required post-petition amounts due, and otherwise determine the status of Debtors' obligations with respect to a claim provided for pursuant to 11 U.S.C. § 1322(b)(5) of their Chapter 13 Plan.

The bankruptcy case was filed On March 4, 2009. At the time of filing, Debtors owned a residence commonly known as 9203 Delair Way, Elk Grove, California ("Property") subject to two notes secured by deeds of trust in favor of Countrywide Home Lending. Debtors also had past due property taxes owed to Sacramento County.

In Debtors original Plan which Debtors proposed to retain their residence and provide for the cure of all past due property taxes, past due payments on the note secured by a first position deed of trust as well as providing for ongoing payments on the note secured by a position deed of trust. The original Plan classified Countrywide Home Lending as a "Class 1" creditor for the payment of both ongoing monthly payments and pre-petition arrears with respect to the note secured by a first petition deed of trust. Under the original Plan, Sacramento County Tax Collector were classified as a Class 2 claim to be paid in full through the Plan. Debtors original Plan classified Countrywide Home Lending as a Class 2 claim with respect to the note secured by a second position deed of trust. The original Plan was confirmed on June 1, 2009. Dckt. 28. On June 1, 2009 as well, the court determined that the value of the collateral securing the Countrywide Home Lending's second position note and deed of trust and the amount of the secured claim of such creditor to be \$0.00. Dckt. 28.

On or about March 17, 2009, Countrywide Home Loan Servicing, L.P. cause a claim to be filed representing the amount due with respect to the note secured by a first position deed of trust. Claim No. 1.

On or about May 6, 2014 Ocwen Loan Servicing LLC gave notice pursuant to Federal Rules of Bankruptcy Procedure 3001(e)(2) of the transfer of Countrywide's Claim 1-1 representing that the Transferor was Countrywide Home Loans Servicing, LLP and the Transferee is Ocwen Loan Servicing LLC. Dckt. 139.

On or about June 24, 2009, the Sacramento County Tax Collector cause a claim to be filed which indicated that the past due property taxes at the time this case was filed totaled \$4,4559.18. Claim 22.

Debtors have filed a total of six modified plans since the case was filed. The reason for the numerous modified plans arose because Debtors experienced difficulties in making the required payments under the Plan and

filed multiple modified plans to excuse delinquencies, adjust their Chapter 13 Plan payments, and to provide for post petition missed payments on Class 1 Claims.

Debtors allege that in connection with their Modified Chapter 13 Plans, Debtors provided for post petition arrears to Countrywide's Class 1 claim to be paid as a Class 2 claim. Through Debtors' Sixth Modified Chapter 13 Plan, Debtors changed the classification of Countrywide's Class 1 claim to Class 4. Debtors allege that all pre-petition and post-petition arrears and ongoing monthly payments were paid.

According to Debtor, the Chapter 13 Trustee paid all post petition monthly payments due on account of Countrywide's Class 1 claim. Beginning April 30, 2009, the Chapter 13 Trustee commenced monthly payments to Countrywide in the amount of \$1,650.00. Beginning May 30, 2011, by way of a double payment on June 30, 2011, Debtors allege that the Chapter 13 Trustee commenced monthly payments to Countrywide in the amount of \$1,684.45.

Debtors allege that beginning with the check written July 10, 2012, the Chapter 13 Trustee experienced problems with payments to Countrywide where Countrywide was not cashing the checks and were no longer accepting them. The Chapter 13 Trustee and Debtors' attorney attempted to determine the proper payee for ongoing payments. Debtors state that the issue was not resolved until 2014. Each of the payments between July 10, 2012 and April 4, 2014 remain uncashed. Debtors state that on or about May 16, 2014, the Chapter 13 Trustee distributed \$28,636.75. Debtors allege that the Chapter 13 Trustee's records show that payments were distributed to Countrywide Home Lending or Ocwen Loan Servicing LLC, Countrywide Home Loans, Countrywide Home Loans, Inc. And Ocwen Loan Servicing LLC.

Debtors allege that the Chapter 13 Trustee paid all pre-petition taxes due to the Sacramento County Tax Collector pursuant to the terms of Debtors' Chapter 13 Plans. Debtors further state that at all times during the course of Debtors' Chapter 13 Plan, Debtors have maintained insurance on their residence.

Following the confirmation of Debtors' Sixth Modified Chapter 13 Plan, Debtors allege that they commenced making direct payments to Ocwen Loan Servicing LLC until such payments were rejected by Ocwen Loan servicing LLC. Debtors state that they are currently holding funds which were rejected by Ocwen Loan servicing LLC and subsequent payments coming due. On July 21, 2014, Debtors caused a "Notice of Final Cure Payment Pursuant to BR 3002.1(f) to be filed with the court and served upon parties in interest, including Ocwen Loan Servicing, LLC.

Debtors state that on August 8, 2014, Ocwen Loan Servicing, LLC filed a "Response to Notice of Final Cure Payment" alleging that "Secured Creditor agrees that Debtors have paid in full the amount required to cure the default on the claim. However, Debtors are contractually due for their November 1, 2013 mortgage payment and have incurred an escrow advance in the amount of \$24,243.95." No docket number has been giving to this response.

Debtors allege that the secured creditor has not provided Debtors with any "Notice of Payment Changes," pursuant to Federal Rule of Bankruptcy Procedure 3002.1(c).

## **OCWEN LOAN SERVICING, LLC'S RESPONSE**

Ocwen Loan Servicing, LLC filed a response on September 16, 2014. Ocwen Loan Servicing, LLC states that it is the holder of the first Deed of Trust on Debtors' Property. Ocwen Loan Servicing, LLC states that it filed a proof of claim on March 17, 2009 and it is currently Claim 12.

Ocwen argues that the two issues identified in Debtors' motion is whether Debtors have made all the post-petition payments required and whether Debtors had accumulated any outstanding fees and costs associated with the account. Ocwen separates its response into two categories: 1) Post-Petition Accounting and 2) Escrow Advances.

As to the post-petition accounting, "Debtors assert that these payments have been rejected by Ocwen but counsel for [Ocwen] invites the Debtors to send the payments to this office for submission to Ocwen." Dckt. 156, pg. 2. Ocwen argues that Debtors are delinquent in payments from November 1, 2013 to September 1, 2014 for a total of \$18,528.95. Ocwen alleges that Debtors have yet to offer proof that these payments have been made or to the fact that Debtors are currently holding on to these funds. According to Ocwen, 66 payments have come due since the time of filing. Since the filing, Ocwen alleges that the mortgage payment has always remained \$1,684.45. Ocwen states that, based on its records, Ocwen has received \$86,764.60 from the Trustee to be applied to post-petition payments, an additional \$3,370.00 on May 19, 2014 from the Debtors and another payment of \$1,650.00 on May 27, 2014 from the Debtors. Ocwen states that Debtors have paid approximately 55 monthly payments making the Debtor due for November 1, 2013. Ocwen alleges that a review of the Trustee's Ledger confirms that they have disbursed \$86,764.60 on the claim.

As to the Escrow Advances, Ocwen argues that Debtor has accumulated \$19,901.87 in escrow delinquency which Ocwen has advanced. Ocwen states that they are currently in the process of obtaining an accounting and breakdown of the escrow advances. Ocwen notes that at the time it filed its "Response to Notice of Final Cure Payment rule 3002.1," the escrow advances were \$24,243.95 but upon further review, Ocwen determined that the 2008 tax in the amount of \$4,342.08 was paid through the plan and therefore the correct delinquency is \$19,901.87.

Ocwen argues that Debtors have made no reference or offer evidence that they have paid all taxes owed and due on the account. While the Debtors do assert that they have maintained insurance on the property, Ocwen argues that the nature of the advances by Ocwen were all based on taxes from 2009 through 2013. Since the account is a fixed rate loan, the payments have not changed since filing and is the reason why the Debtors' account is not impounded. Ocwen maintains that the escrow advances are correct and due remain owing on the property.

Ocwen requests that the court continue the hearing 30-45 days to allow the parties to resolve the issues or to allow Ocwen time to provide an accounting on the escrow arrears.

## **TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response to the instant motion on September 23, 2014. Dckt. 161.



In the response, the Trustee first notes that the Trustee was not served with the instant motion and was not included in the Certificate of Service. Dckt. 153.

The Trustee confirms that Ocwen's statement that it has received \$86,764.60 from the Trustee to be applied to post petition payments is an accurate reflection of the Trustee's accounting. The Trustee clarifies that the addition \$3,370.00 that Ocwen says was received by the Debtors on May 19, 2014 was actually made by the Debtors. The Trustee notes that the delinquency in question appears to have occurred after the plan was modified to pay the mortgage as a Class 4 debt.

Lastly, the Trustee states that the Debtors reference to Ocwen not providing any "Notice of payment changes" pursuant to Federal Rule of Bankruptcy Procedure 3002.1 may not be applicable because the latest confirmed plan calls for the claim to be paid directly by the Debtors.

#### **SEPTEMBER 30, 2014 HEARING**

At the September 30, 2014 hearing, the court continued the hearing to 3:00 p.m. on November 4, 2014. The court ordered that Ocwen Loan Servicing, LLC shall file on or before October 21, 2014 a final accounting of what Ocwen Loan Servicing, LLC alleges is owed in post-petition payments and any escrow arrears. The court further ordered that Debtors shall file on or before October 28, 2014 any responses or supplemental pleadings.

If court intervention is deemed necessary, the court will determine what the amount of post-petition payments and escrow arrears may be due. If the matter cannot be resolved by the parties prior to the continued hearing date, the court will order a senior officer at Ocwen Loan Servicing, LLC to appear in court and order that the Debtors appear as well with a cashier's check in the amount the court determines is owed to Ocwen Loan Servicing, LLC so the payment can be on the record.

#### **OCWEN LOAN SERVICING, LLC NOTICE OF FINAL ACCOUNTING**

On October 21, 2014, Ocwen Loan Servicing, LLC filed a Notice of Final Accounting. Dckt. 172. The Notice states that effective October 20, 2014, Debtors owe the following amounts:

1. 12 mortgage payments from November 1, 2013 to October 1, 2014 in the amount of \$1,684.45 each for a total of \$20,213.40.
2. \$19,901.87 in escrow advances from 2009 to 2013.
3. Debtors have a total post-petition delinquency of \$40,115.27.

#### **DEBTORS' RESPONSE**

To date, the Debtors have not filed any response or supplementing pleadings. The court's order required that any responses be filed by the Debtors on or before October 28, 2014,

#### **DISCUSSION**

On May 6, 2014, Ocwen Loan Servicing, LLC filed a Transfer of Claim Other Than For Security purporting that Proof of Claim No. 1 had been transferred to it by Countrywide Home Loans Servicing, LP. That seems unlikely for several reasons. First, no transfer documents are attached. Second, Countrywide Home Loans Servicing, LP was turned into BAC Home Loans Servicing, LP when Bank of America, N.A. acquired the various Countrywide entities following the 2007 mortgage meltdown and while George W. Bush was still president. In 2011 BAC Home Loans Servicing, LLC was merged into Bank of America, N.A. Texas Secretary of State Certificate of Merger, effective July 1, 2011. Thus, there was no Countrywide Home Loans Servicing, LP to have assigned the claim (nor may of one existed when attorneys filed Proof of Claim No. 1 on March 17, 2009.) Finally, Owen Loan Servicing, LLC has come before this court previously as the servicing company for the actual creditor (as defined by 11 U.S.C. § 101(1) and (5)), not the creditor. The purported assignment may misidentify it as the creditor.

Notwithstanding the above questions, the Debtors are satisfied with having this determination made with Owen Loan Servicing, LLC. Since the determination is only whether the Debtors have made the payments to Ocwen Loan Servicing, LLC, such a loan servicing party is sufficient.

The court realizes it could have been more precise in its prior order affording Ocwen Loan Servicing, LLC the opportunity to provide a final accounting of what it asserted was due and what it asserts was paid. See Order, Dckt. 167, ordering that "Ocwen Loan Servicing, LLC shall file and serve a final accounting of what Ocwen Loan Servicing, LLC alleges is owed in post-petition payments and any escrow arrearages." Given that Owen Loan Servicing, LLC and its counsel regularly appear in this court and know that this court relies on competent credible evidence in making determinations, it is surprising to see only a Notice of Final Account which is signed by the attorneys for Ocwen Loan Servicing, LLC. No declaration of a knowledgeable person, who can provide credible testimony for an "accounting" has been provided. See Notice of Final Accounting, Dckt. 172. The court shall be very clear with Ocwen Loan Servicing, LLC and its counsel in the future that competent evidence must be provided for factual allegations which are asserted.

This "Final Accounting" consists of only the statement that twelve mortgage payments came due during the period from November 1, 2013 to October 1, 2014, in the amount of \$1,684.45 each, for a total of \$20,213.40. The "account" does not state what payments were received during this period and how those payments were applied.

The "accounting" further states that there have been \$19,901.87 in escrow advances during the period 2009 to 2013. The "accounting" does not state what these "escrow advances" have been for, when they were made, the amount of the advances, and what monies, if any, were applied to escrow advances. The court is merely told to accept the statement from the attorneys for Ocwen Loan Servicing, LLC that there are \$19,901.87 in escrow advances.

In its earlier response to this Motion a declaration of Javier Rivera was provided by Ocwen Loan Servicing, LLC. Dckt. 150. In the declaration he states the following:

- A. Since the March 4, 2009 commencement of this bankruptcy case 66 payments on the loan have come due. (September 17, 2014

declaration date).

- B. The monthly mortgage payments are \$1,684.45.
- C. Ocwen Loan Servicing, LLC has received
  - 1. \$86,764.60 from the trustee for post petition monthly payments;
  - 2. \$3,370.00 additional payment on May 19, 2014; and
  - 3. \$1,650.00 additional payment on May 27, 2014.
- D. Debtor is \$18,528.95 delinquent in payments, having made only 55.
- E. Since the filing of the bankruptcy case, \$19,901.87 in escrow advances have been made for 2009 to 2013 real property taxes.

Using the information from the declaration, the court does the mathematical computations (as our grade school teachers would say, "show your work") as to how Ocwen Loan Servicing, LLC reaches these conclusions.

I.	Total Monthly Payments Due, 66 x \$1,684.45.....	\$111,173.70
II.	Monthly Payments Received From Trustee.....	(\$ 86,764.60)
III.	Additional Payment From Trustee.....	(\$ 3,370.00)
IV.	Additional Payment.....	<u>(\$ 1,650.00)</u>
V.	Unpaid Monthly Installments.....	\$ 19,389.10

The court's multiplication and subtraction yields a slightly higher number.

Mr. Rivera further testifies that the escrow advances were made for property tax years for 2009 - 2013 (which the court interprets to be payments for five tax years). The total advanced is stated to be \$19,901.87, which would equal \$3,980.37 a year. The Debtors schedule this real property as having a value of \$240,000.00 on Schedule A. Dckt. 1. A \$4,000 a year real property tax payment on California for a \$240,000 property appears to be higher than one would expect. However, it may be that when the Debtors purchase the property it had a significantly higher value, and nobody has sought a reassessment of the value to lower the property taxes. FN.1.

-----  
FN.1. In California, pursuant to "Prop 13," the maximum amount of any ad valorem tax on real property shall not exceed 1% of the full cash value of said property. Cal. Const. Article XIII A. Sec. 1. Thus, a \$4,000 a year tax would be expected on a property which has a value of \$400,000.00.  
-----

The "accounting" provided by Ocwen Loan Servicing, LLC does not provide anything other than a short summary of the information in prior declaration.

Taken on its face, Owen Loan Servicing, LLC has provided testimony that there are post-petition payments which have not been paid by the Debtors. No accounting of the payments received and applied has been provided. Though there is an Exhibit 2 which lists "payments" filed with the original Response from Ocwen Loan Servicing, LLC (Dckt. 157 at 25-29, no witness has authenticated it or provided any testimony under penalty of perjury that the information there is accurate.

The Trustee concurs that \$87,764.60 has been disbursed by the Trustee to apply to post-petition payments. Declaration, Dckt. 163. In addition, he confirms that the Trustee made an additional payment of \$3,370.00 on May 16, 2014.

While the Debtor disputes that there is an arrearage, no evidence to the payments actually made are provided. Debtor testifies that he has regularly paid the insurance. Dckt. 154. He alleges that "funds have been returned," but does not provide the court with the specific amount of "returned funds."

In considering all of the evidence presented, it appears that Debtor has not carried the burden of the Objection. The evidence is that some post-petition amounts are unpaid. Further, Ocwen Loan Servicing, LLC asserts a lump sum for five years of property taxes.

The Motion is denied, without prejudice. Though the court would like to close the door on this dispute, neither party has presented the court with sufficient evidence to determine what specific arrearage, and the specific elements of such arrearage, may, or may not, exist. Rather, each party provides the court with conclusions, statements of gross amounts, and speculation.

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 Motion to Determine that Debtor has Cured All Defaults and Paid All Required Post Petition Payments 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. The court makes no determination as to what defaults, if any, remain, the amount of such defaults, and the specific defaults or advances which may, or may not, exist.

4. [12-37521](#)-E-13 BENJAMIN/IMELDA CASTRO MOTION TO SELL  
HLG-3 Kristy A. Hernandez 10-15-14 [[46](#)]

**Tentative Ruling:** The Motion to Sell Property 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.

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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Not 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 October 16, 2014. By the court's calculation, 19 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----  
-----.

<b>The Motion to Sell Property is denied without prejudice.</b>
---

The Bankruptcy Code permits the Debtors, Benjamin and Imelda Castro, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the "Property" described as follows:

a. 1225 Depot Street, Units A & B, Woodland, California

However, Movant has not timely given the notice required for a Motion to Sell. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires that 21 days notice be given to parties in interest for "a proposed use, sale, or lease of

property of the estate other than in the ordinary course of business," unless the court orders otherwise. Movant served notice on the necessary parties on October 16, 2014. This is only 19 days before the hearing date. Movant has not otherwise secured court approval to file this Motion on shortened time. The court must deny the Motion for this deficiency. Furthermore, there is no signature on the Proof of Service.

Looking at the motion, the proposed purchaser of the Property is Timothy P. Snow and the terms of the sale are that Mr. Snow purchased the Property for \$205,000.00. Movant believes this is a fair price, having valued the Property at \$202,500.00 at the filing of the case in Schedule A. The two lienholders, Nationstar Mortgage, LLC assignee of Bank of America, N.A., and Wells Fargo Bank, N.A. ("Creditors") will be paid in full according to short sale approval before or concurrently with the transfer of title to Mr. Snow as buyer. All costs of sale will be paid in full from sale proceeds.

For this Motion, the Movant has established that the Estimated Settlement Statement ("HUD-1") shows that the purchase price will be sufficient to pay off the Creditors in the short sale amount and will cover all associated settlement charges and taxes. Exh. E, Dckt. 48. The title company will provide a Final HUD-1 statement to the Trustee at the time of closing.

David Cusick, the Chapter 13 Trustee, filed non-opposition to this Motion on October 17, 2014.

The court must deny the motion on this ground. This will allow the Debtors' counsel and "Nationstar Mortgage, LLC" to correct or supplement the documentation so the court can have a good faith believe that it is approving and authorizing a transaction between the real parties in interest who have a case or controversy before this federal court. U.S. Constitution Article III, Section 2.

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 Sell Property filed by Benjamin and Imelda Castro ("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 Sell is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING  
IF MOVANT CAN PROPERLY MOVE THE COURT FOR AN ORDER SHORTENING  
TIME**

#### **ALTERNATIVE RULING**

The Bankruptcy Code permits the Debtors, Benjamin and Imelda Castro, ("Movant") to sell

property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the "Property" described as follows:

A. 1225 Depot Street, Units A & B, Woodland, California

Looking at the motion, the proposed purchaser of the Property is Timothy P. Snow and the terms of the sale are that Mr. Snow purchased the Property for \$205,000.00. Movant believes this is a fair price, having valued the Property at \$202,500.00 at the filing of the case in Schedule A. The two lienholders, Nationstar Mortgage, LLC assignee of Bank of America, N.A., and Wells Fargo Bank, N.A. ("Creditors") will be paid in full according to short sale approval before or concurrently with the transfer of title to Mr. Snow as buyer. All costs of sale will be paid in full from sale proceeds.

For this Motion, the Movant has established that the Estimated Settlement Statement ("HUD-1") shows that the purchase price will be sufficient to pay off the Creditors in the short sale amount and will cover all associated settlement charges and taxes. Exh. E, Dckt. 48. The title company will provide a Final HUD-1 statement to the Trustee at the time of closing.

David Cusick, the Chapter 13 Trustee, filed non-opposition to this Motion on October 17, 2014.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Sell Property filed by Benjamin and Imelda Castro, the Chapter 13 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 Benjamin and Imelda Castro, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Timothy P. Snow or nominee ("Buyer"), the Property commonly known as 1225 Depot Street, Units A & B, Woodland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$205,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 48, and as further provided in this Order.
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 Chapter 13 Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor 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.

5. [14-27422-E-13](#) LONNIE/SHARON SHURTLEFF CONTINUED MOTION TO VALUE  
CAH-1 C. Anthony Hughes COLLATERAL OF JPMORGAN CHASE  
BANK, N.A.  
8-15-14 [[18](#)]

**Tentative Ruling:** The Motion to Value Secured Claim 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).

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.

**Below is the court's tentative ruling.**

-----  
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 JPMorgan Chase Bank, N.A., Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim 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).

<b>The Court's Decision is to <del>xxxxx</del> the Motion to Value the secured Claim of JPMorgan Chase Bank, N.A.</b>
---

The Motion to Value filed by Lonnie and Sharon Shurtleff ("Debtors") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor").



## **MOTION**

The Debtors' motion is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 308 Savoy Avenue, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of \$175,000.00 as of the petition filing date. As the owners, Debtors' 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

## **OPPOSITION**

Creditor has filed an opposition on September 2, 2014. Creditor objects to both the Debtors' valuation of the Property and the balance of the first deed of trust on the Property. Creditor alleges that the balance of the first deed of trust is \$214,000.00 and the value of the Property is approximately \$233,000.00. Dckt. 37. Creditor states that it is in the process of getting a valuation of the Property in support of this allegation.

## **SEPTEMBER 16, 2014 HEARING**

The hearing for this motion was set for September 16, 2014. The hearing was continued to September 30, 2014 to allow the Creditor and Debtor to come to a settlement or stipulation regarding the value of the Property central to the instant motion. A review of the docket shows that no supplemental documents, stipulations, or claims have been filed in relation to this motion.

The hearing was continued to 3:00 p.m. on October 7, 2014 due to technical difficulties with the court call at the September 30, 2014 hearing.

## **CREDITOR'S SUPPLEMENTAL FILING**

Creditor filed a notice of filing appraisal in opposition to the instant motion on September 30, 2014. Dckt. 45. Attached to the notice was a Residential Appraisal Report performed by Linda Molinari of Prestige Appraisal Service, Inc. The thorough report gave the opinion of value of the Property at \$225,000.00. Dckt. 46.

## **OCTOBER 7, 2014 HEARING**

At the October 7, 2014 hearing, the court continued the hearing to 3:00 p.m. on November 4, 2014 to allow both Debtors and Creditor to continue conducting additional informal discovery. Dckt. 69.

## **NOVEMBER 4, 2014 HEARING**

At the November 6, 2014 hearing, -----

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 filed by the Debtors to Value the Secured Claim of JPMorgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value is -----.

6. [14-27422](#)-E-13 LONNIE/SHARON SHURTLEFF  
ALP-1 C. Anthony Hughes

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
JPMORGAN CHASE BANK, N.A.  
8-29-14 [[32](#)]

Continued from 10/7/14 -

**Tentative Ruling:** The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

-----  
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, and Chapter 13 Trustee on August 29, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----  
-----.

<p>The Court's Decision is to <del>xxxxx</del> the Objection to Confirmation filed by JPMorgan Chase Bank, N.A.</p>
---

JPMorgan Chase Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that Lonnie and Sharon Shurtleff's ("Debtors") Plan is proposed based on the assumption that Creditor's lien will be avoided if the Debtor's motion to value is granted. Dckt. 18. Creditor has filed its opposition to the motion to value independently. Dckt. 37. If the Debtors' Motion to Value is denied, Debtors will be unable to comply with the terms of their Plan, making the Plan infeasible.

**NOVEMBER 4, 2014 HEARING**

At the November 4, 2014 hearing, ----

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

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

The Objection to Confirmation filed by JPMorgan Chase Bank, N.A. 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 is ----  
----.

7. [14-28724-E-13](#) VICTORIA MONSCOUR  
DPC-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-8-14 [[16](#)]

**Tentative Ruling:** The Objection to Plan 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.

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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

-----  
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 8, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----  
-----.

**The court's decision is to overrule the Objection.**

David Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. No Motion to Value Collateral: The Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of Real Time Resolutions on a second deed of trust on Debtor's residence, but has failed to file a Motion to Value Collateral to date.

On October 13, 2014, the Debtor filed a Motion to Value Collateral of Real Time Resolutions. Dckt. 20. On November 4, 2014, the court granted the

Motion to Value Collateral, valuing Real Time Resolutions secured claim to be \$0.00.

Because the Motion to Value Collateral has been granted, the objection is overruled. The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) 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 David Cusick, Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 28, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** The Motion to Value 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.

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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

-----  
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, Real Time Resolutions, Inc., parties requesting special notice, and Office of the United States Trustee on October 13, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----  
-----.

<p><b>The Motion to Value secured claim of Real Time Resolutions, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.</b></p>
--

The Motion to Value filed by Victoria Monscours ("Debtor") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7508 Maldiva Street, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of \$218,239.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **OPPOSITION**

Creditor has not filed an opposition.

#### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$249,913.34. Creditor's second deed of trust secures a claim with a balance of approximately \$55,999.50. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Victoria Monscour ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolutions, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 7508 Maldive Street, Rio Linda, 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 \$218,239.00 and is encumbered by senior liens securing claims in the amount of \$249,913.34, which exceed the value of the Property which is subject to Creditor's lien.

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

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 18, 2014. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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.**

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 creditors. The chapter 13 Trustee, on October 20, 2014, filed notice of non-opposition. 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 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

10.    [13-36132](#)-E-7    THAN PHUNG    MOTION TO CONFIRM PLAN  
CAH-1            Aaron Koenig    9-4-14 [[59](#)]

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

The case having previously been converted to a Chapter 7 case on September 10, 2014 (Dckt. 68), 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 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been converted to a Chapter 7.

11. [10-50941](#)-E-13 JOEL/MAGGIE DAUGHERTY  
RCW-1 Ryan Wood

MOTION TO VALUE COLLATERAL OF  
BRANIFER FINANCIAL, INC. AND/OR  
MOTION TO AVOID LIEN OF  
BRANIFER FINANCIAL, INC.  
10-2-14 [[48](#)]

**Tentative Ruling:** The Motion to Value 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 Defaults of the non-responding parties are entered by the court.

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Branifer Financial, Inc., Carrington Mortgage Holdings, LLC, Flagstar Bank, FSB, Chapter 13 Trustee, and Office of the United States Trustee on October 2, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value secured claim of Branifer Financial, Inc. and its successor and assign Flagstar Bank, FSB ("Creditor") is denied without prejudice**

The Motion to Value filed by Joel and Maggie Daugherty ("Debtors") to value the secured claim of Branifer Financial, Inc. and its successor and assign Flagstar Bank, FSB ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1359 Keri Lane, Chico, California ("Property"). Debtor seeks to value the Property at a fair market value of \$250,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

## **DISCUSSION**

Debtors seek to value the collateral of "Branifer Financial, Inc. and its successor and assign Flagstar Bank, FSB" as a second mortgage. However, the court notes that both the Debtors' Declaration (Dckt. 50) and the Proof of Claim filed on behalf of Flagstar Bank indicate that the Creditor's claim is a senior deed of trust to Carrington Mortgage's deed.

### **Misidentification of Creditor in Motion**

In the Motion, Debtors' counsel states that the second deed of trust is held by Branifer Financial, Inc. and its successor and assign Flagstar Bank, FSB in the amount of \$93,061.00. Dckt. 48. The motion states that a first deed of trust exists on the Property in the amount of \$296,338.00. This conflicts with Claim No. 12, filed by Green Tree Servicing on behalf of Flagstar Bank, which asserts that Flagstar Bank has a first deed of trust on the Property with a claim in the amount of \$260,808.56. Debtors' Declaration states that Flagstar Bank holds the senior deed of trust, with a claim of \$296,338.00. Dckt. 50. Debtors further assert that Carrington Mortgage holds a junior deed of trust, with a claim of \$93,601.00. They conclude their Declaration with a statement that they wish to value Carrington's secured claim at \$0.00. The court cannot determine which creditor's claim this Motion seeks to value. Because of this, the court cannot grant the Motion.

From the evidence presented it appearing that the creditor whose secured claim Debtors seek to value is Carrington Mortgage, this Motion to Value a secured claim of Flagstar Bank, FSB is denied without prejudice.

**Conflating Post-Plan Completion Relief With Valuation  
of Secured Claim Pursuant to 11 U.S.C. § 506(a)**

Further, the instant Motion purports to seek to value the secured claim of Creditor, and then avoid that lien. Debtors appear to have conflated two independent provisions under the Bankruptcy Code. Debtors plead only for relief under 11 U.S.C. § 506(a), which allows debtors to value secured claims. Valuing a secured claim is just one step toward rendering a wholly under-collateralized secured claim unsecured. Operation of California state law and 11 U.S.C. § 506(d) impart upon the creditor the obligation to reconvey a deed of trust upon a debtor has successfully completed the Chapter 13 Plan which provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case); *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between the Debtors and the creditor holding the valued secured claim, there remains no obligation which is secured by the junior deed of trust. As a matter of California law, that junior deed of trust is void. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

Conversely, lien avoidance is governed by 11 U.S.C. §§ 522(f) or 545 and applies only to those involuntary liens which impair a debtor's exemption in the property. A motion to value alone will achieve the desired result for the Debtors, as described above.

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 Joel and Maggie Daugherty ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

12. [13-20541](#)-E-13 NEIL FREEMAN  
DEF-8 David Foyil

MOTION TO MODIFY PLAN  
9-18-14 [[101](#)]

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

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 18, 2014. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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.

<b>The Motion to Confirm the Modified Plan is granted.</b>
--

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 creditors. The Chapter 13 Trustee filed a notice of non-opposition on October 20, 2014. 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 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order

confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [09-35543](#)-E-13 ROBERT/ASHLEY PLACE OBJECTION TO CLAIM OF  
NLE-3 Justin Kuney CITIFINANCIAL SERVICES, INC.,  
CLAIM NUMBER 4  
9-18-14 [[98](#)]

**Final Ruling: No appearance at the November 4, 2014 hearing is required.**

-----  
Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 4 of Citifinancial Services, Inc. is sustained and the claim is disallowed in its entirety.**

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Citifinancial Services, Inc. ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. FN.1. The Claim is asserted to be secured in the amount of \$10,092.09.

-----  
FN.1. The Objector notes that the Creditor filed an amended Proof of Claim on June 10, 2013 which is a redacted version of the original due to confidential personal information in the originally filed Proof of Claim. All other information in the claims are identical.



-----

Objector asserts that the Claim reflects a secured claim in item 4 for \$10,092.09, and describes the property that the creditor has a security interest in as "New Money." Attached to the claim is a document entitled "Disclosure Statement and Security Agreement," which did not check a box to indicate any security interest in the choices given on the form, which are "Motor Vehicle," "Mobile Home," or "Other." The "SECURITY AGREEMENT" section of the attachment does not list any property.

Objector alleges that the Creditor does not provide documents proving security as required by Fed. R. Bankr. P. 2001(a). The Objector argues that the claim should be allowed as unsecured. According to the Objector, unsecured creditors are scheduled to receive at least 7%, which would be \$706.45 in this instance. The Objector states that he has previously disbursed \$694.09 to this Claim.

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).

A review of the Proof of Claim 1-1 shows that Creditor filed a claim in the amount of \$10,092.09. The basis of the claim is listed as a "Money Loaned." Under Item 4 for "Secured Claim," Creditor states that the "Nature of property or right of setoff" as "New Money." Creditor states that the full \$10,092.09 is a secured claim and \$0.00 is unsecured. A review of the attached document to the Proof of Claim appears to be a disclosure statement. Nowhere on the statement is there any indication that the claim is secured nor as to what property it would be secured by.

Without knowing what secures the claim, the court cannot determine the nature of the claim.

Seeing as Creditor has not opposed the instant objection, no further evidence as to the nature of the claim filed, and a review of the Proof of Claim providing no evidence as to how or why the claim is secured, the Proof of Claim cannot stand as a secured claim.

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

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

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

The Objection to Claim of Citifinancial Services, Inc., Creditor, filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 4 of Citifinancial Services, Inc. is sustained and the claim is disallowed as a secured claim, with the claim stated in Proof of Claim No. 4 being an unsecured claim filed in this case.

14. [09-45945-E-13](#)    **THOMAS HARDER**    **MOTION TO MODIFY PLAN**  
RLG-3                      **Robert Goldstein**                      10-14-14 [[97](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

**Below is the court's tentative ruling.**

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

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 October 14, 2014. By the court's calculation, 21 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

Thomas Harder ("Debtor") filed the instant Motion to Confirm the

Modified Plan on October 14, 2014. Dckt. 97.

#### **TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, file an objection to the instant Motion on October 20, 2014. Dckt. 105. The trustee objects on the following grounds:

1. Insufficient Notice. The Proof of Service indicates service was made by first class mail on October 14, 2014. By the Trustee's calculation, 21 days notice was provided when 35 days notice is required pursuant to Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1).
2. No Modified Plan: Debtor has not filed a modified plan. Local Rule 3015-1(d)(2) which states a modified plan shall be filed and served together with the motion to confirm.
3. Proposed Plan Payment: The Trustee is uncertain of the plan payment proposed. Debtor's Motion (Dckt. 97, pg. 2, lines 14-15) indicates Debtor requests payments from April 2014 through September 2014 be suspended. Debtor's Declaration (Dckt. 99, pg. 2, lines 12-13) states, "I believe that I will be able to afford the final payments of my bankruptcy if my past due payments are suspended." The Trustee believes the Debtor seeks to modify the plan to call for two more payments in the amount of \$210.00 each. Under the confirmed plan, Debtor's plan payments are \$164.30 for three months, then \$210.00 for 57 months with 0% to unsecured creditors. Through September, \$12,042.90 has become due under the confirmed plan. To date, Debtor has paid to the Trustee a total of \$11,202.90, representing a delinquency of \$840.00, or 4 payments. Debtor's last payment to the Trustee posted July 8, 2014 in the amount of \$210.00. The Trustee filed a Motion to Dismiss on August 29, 2014 (Dckt. 91) for delinquency which has been continued to November 12, 2014. Debtor's Motion is requesting six months of payments be suspended where Debtor is only 4 months delinquent; six months of payments would complete the plan and the Motion would be a motion for hardship discharge. Debtor's declaration requests only the past due payments be suspended. The Trustee does not oppose the proposed change in payments if it is for two more payments in the amount of \$210.00 each.
4. Possibly Insufficient: Debtor's Declaration may not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a), namely whether Debtor has any domestic support obligations and whether he is current under those obligations, and whether Debtor has filed all applicable tax returns.
5. Amended Schedules: Debtor's Amended Schedules I and J were not filed using Official Form B 6I and B 6J effective December 2013.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken. The Debtor has failed to give the necessary 35 days notice for a Motion to Confirm, only providing 21 days. The Debtor has not attached any modified plan for the court to confirm. Without a plan, the court cannot determine if the terms are reasonable or feasible given the circumstances of the case. Lastly, the Debtor has failed to use the proper forms required by the Local Rules.

As to the issue of the suspension of the plan payments for the delinquent month, the Debtor has improperly moved the court for that relief. The Motion is to modify an unattached plan and not to determine hardship and suspension. Therefore, the request is denied. FN.1.

-----  
FN.1. Debtor and Debtor's counsel can visit the Trustee's point as whether Debtor is actually, or should be, seeking a "hardship discharge" in this case. See 11 U.S.C. § 1328(b). The Debtor has only the final two months to deal with in his plan. The "modification" of the existing plan is to waive the payments required for the months of April 2014 through September 2014 because the Debtor was laid off from his job.

-----  
Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

15. [14-28953](#)-E-13 JOHN/MARY ANDERSON  
DPC-1 Dale Orthner

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-8-14 [[17](#)]

**Tentative Ruling:** The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

-----  
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 8, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----  
-----.

<b>The court's decision is to sustain the Objection.</b>
--

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Treatment of Ocwen: Debtors propose to treat Ocwen as Class 2 claim, and Class 2 requires such claims, "Class 2 claims shall be paid in full." (Dckt. 5, pf. 2, § 2.09(a)). No motion to value has yet been filed, and where the plan proposed the claim be valued at \$325,000.00 and only proposes monthly payments of \$1,105.02, the plan will not pay claims as proposes, 11 U.S.C. § 1325(a)(6). Payments of the impaired claim in full during the course of the plan appears required. *In re Enewally*, 368 F.3d

1165 (9<sup>th</sup> Cir. 2004). Debtors' plan relies on a Motion to Value Collateral being filed for their rental real property located at 1206 Los Robles Road, Placerville, California. Ocwen is listed in Class 2B. To date, the Debtors have failed to file a Motion to Value Collateral. The Debtors propose to pay Ocwen \$325,000.00 at 2% with a monthly dividend of \$1,105.02 for 60 months. It will take 404 months to pay the claim in full.

The Trustee's objection is well-taken. As of October 29, 2014, no Motion to Value Collateral has been filed by the Debtors. A review of the proposed plan shows that Ocwen is listed as a Class 2 creditor, requiring it to be paid in full.

Because no Motion to Value Collateral has been filed and the Plan lists Ocwen as a Class 2 creditor to be paid in full when it would take longer than the life of the Plan, 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 David Cusick, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. [13-35754-E-13](#) MATTHEW/ARIANA VICKERS  
WSS-1 W. Steven Shumway

MOTION TO SET PROPERTY VALUE  
9-25-14 [[38](#)]

Final Ruling: No appearance at the November 4, 2014 hearing is required.  
-----

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 Internal Revenue Service, United States Attorney for Internal Revenue Service, United State Department of Justice, Chapter 13 Trustee, and Office of the United States Trustee on September 25, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 non-responding parties 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 secured claim of Internal Revenue Service ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Matthew and Ariana Vickers ("Debtors") to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 14169 Chestnut Court, Penn Valley, California ("Property"). Debtors seek to value the Property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest**

**in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **OPPOSITION**

Creditor has not filed an opposition.

#### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$209,589.00. Creditor's second deed of trust secures a claim with a balance of approximately \$86,541.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Matthew and Ariana Vickers ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Internal Revenue Service secured by a second in priority deed of trust recorded against the real property commonly known as 14169 Chestnut Court, Penn Valley, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is an unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims in the amount of \$209,589.00, which exceed the value of the Property which is subject to Creditor's lien.



17. [13-35754-E-13](#) MATTHEW/ARIANA VICKERS  
WSS-2 W. Steven Shumway

MOTION TO AVOID LIEN OF LAKE  
WILDWOOD ASSOCIATION  
9-25-14 [[28](#)]

**Tentative Ruling:** The Motion to Avoid 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).

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Internal Revenue Service, Allied Trustee Services, Lake Wildwood Association, Chapter 13 Trustee, and Office of the United States Trustee on September 25, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Avoid 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Avoid Judicial Lien is denied without prejudice.</b>
---

This Motion requests an order avoiding the judicial lien of Lake Wildwood Association ("Creditor") against property of Matthew and Ariana Vickers ("Debtors") commonly known as 14169 Chestnut Court, Penn Valley, California (the "Property").

A notice of delinquent assessment was entered against Debtor in favor of Creditor in the amount of \$2,733.03. The Notice of Delinquent Assessment was recorded with Nevada County on May 14, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$150,000.00 as of the date of the petition. The unavoidable consensual liens total \$209,589.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$4,500.00 on Schedule C.

**The HOA Lien is Not a Judicial Lien Subject to  
Avoidance Pursuant to 11 U.S.C. § 522(f)**

The motion is denied pursuant to 11 U.S.C. § 522(f)(1)(A), which allows avoidance of "judicial" liens. A judicial lien is "obtained by judgment, levy, sequestration or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). Here, Debtors seek to avoid a statutory lien for unpaid association fees. A statutory lien is a "lien arising solely by force of a statute on specified circumstances or conditions...." 11 U.S.C. § 101(53). Statutory liens are not subject to avoidance under 11 U.S.C. § 522(f)(1)(A). 4 COLLIER ON BANKRUPTCY ¶ 522.11[2] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The lien document provided as an exhibit to the Motion is entitled "Notice of Delinquent Assessment." Exhibit "Unnumbered," Dckt. 31. On its face the Notice states that it is being given pursuant to California Civil Code § 1367.1(d) [which section was in effect when the Notice was issued in May 2013] and the provision of the Declaration of Covenants, Conditions and Restrictions (CC&Rs). FN.1. This Notice does not purport to be an abstract of judgment or other judicial lien. California Civil Code § 1367.1(d) statutorily provides that the obligation owed for the fee or assessment "[s]hall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located...."

-----  
FN.1. The referenced provision, and related provisions of the Civil Code were repealed pursuant to California AB 80, 2012 Chapter 180. These provisions were moved to California Civil Code §§ 4000 et seq. effective January 1, 2014.  
-----

The lien at issue is not a judicial lien, but a lien arising solely by force of a statute on specified circumstances or conditions.

Therefore, because the Debtors are improperly attempting to avoid the statutory lien of the Creditor under 11 U.S.C. § 522(f), 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 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 Motion is denied without prejudice.

18. [13-35754-E-13](#) MATTHEW/ARIANA VICKERS  
WSS-3 W. Steven Shumway

MOTION TO MODIFY PLAN  
9-25-14 [[33](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

**Below is the court's tentative ruling.**

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

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 25, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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 Modified Plan.**

Matthew and Ariana Vickers ("Debtors") filed the instant Motion to Confirm the Modified Plan on September 25, 2014. Dckt. 38. Debtors state that the reason for the proposed modified plan is due to the claims filed by Internal Revenue Services, Nationstar Mortgage LLC, and some other creditors are different than the amount Debtors provided for in their confirmed plan.

#### **TRUSTEE'S OBJECTIONS**

David Cusick, the Chapter 13 Trustee, filed an objection to the Motion on October 21, 2014. Dckt. 43. The Trustee objects on the following basis:

1. The Debtors' are delinquent \$6,200.00 under the proposed plan. \$55,800.00 has become due under the proposed plan. The Debtors have paid a total of \$49,600.00 to the Trustee, with the last payment posted September 23, 2014.

2. The Debtors' plan may not be feasible. The Debtors have filed a Motion to Avoid Lien (Dckt. 28) and Motion to Set Property Value (Dckt. 38). Both motions are set to be heard on November 4, 2014. If the motions are granted the Trustee calculates the plan payment needs to be approximately \$6,694.00 per month to complete within 60 months. The Debtors have completed nine months of the Plan. Approximate remaining amounts to be paid are:

Monthly contract installment (\$1,650.00 x 51)	\$84,150.00
Class 1 mortgage arrears	\$15,970.00
Class 2 A claim including interest	\$15,751.00
Class 2 B claim including interest	\$26,226.00
Priority claims filed	\$91,741.00
IRS secured to priority per motion (Dckt. 38)	\$86,541.00
Attorney fees	\$3,260.00
<b><u>Subtotal</u></b>	<b><u>\$233,639.00</u></b>
Approximate Trustee fees	\$17,752.00
<b><u>TOTAL</u></b>	<b><u>\$341,391.00</u></b>

The plan payment for the remaining 51 months of the plan would need to be \$6,694.00.

## DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken. First, the court cannot confirm a plan when the Debtors are delinquent on the terms of the proposed plan. The Debtors have not provided any evidence of the cure of the default. Second, the Trustee alleges that the Plan is not feasible under 11 U.S.C. § 1325(a)(6), specifically that the proposed monthly payments for the balance of the plan term are insufficient to pay the Trustee's fee, administrative fees, the Class 1 mortgage arrears, the Class 2 A and B claims, the priority claims, or the Internal Revenue Service priority claim. The plan cannot be confirmed because the plan payments are insufficient. Furthermore, because the Motion to Avoid Lien is denied because the Debtors cannot avoid a statutory lien under 11 U.S.C. § 522(f), the homeowners association statutory lien must

be provided for in the plan. The proposed plan does not provide for such and, therefore, the Trustee's second objection is sustained as well.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

19. [10-40257](#)-E-13 MATT BRIDGES AND KATHY MOTION FOR COMPENSATION FOR  
PGM-2 PERRY-BRIDGES PETER G. MACALUSO, DEBTORS'  
Peter Macaluso ATTORNEY  
10-3-14 [[92](#)]

**Final Ruling: No appearance at the November 4, 2014 hearing is required.**  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 3, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

#### **FEES REQUESTED**

Peter Macaluso ("Applicant"), the Attorney for Matthew Bridges and Kathryn Perry-Bridges the Chapter 13 Debtors ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period June 4, 2014 through October 3, 2014. The order of the court approving employment of Applicant was entered on June 10, 2014, Dckt. 72.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 7.85 hours in this category. Applicant assisted Client with actual, reasonable, and necessary post-confirmation work, including client communication and responding to oppositions for the modified plan.

#### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:





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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 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 Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtors

Fees in the amount of \$ 2,355.00,

The fees are allowed pursuant to 11 U.S.C. § 331 as interim fees, subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the funds in trust of \$1,000.00 may be released to Counsel to be applied toward the total fees.

**IT IS FURTHER ORDERED** that the Chapter 13 Debtors are authorized to pay the remaining \$1,355.00 fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

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 29, 2014. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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.**

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 creditors. The Chapter 13 Trustee filed a notice of non-opposition on October 21, 2014. 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 29, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [14-30070](#)-E-13 LEAH CHERRY  
MRL-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF  
VANDERBILT MORTGAGE AND  
FINANCE, INC.  
10-20-14 [[16](#)]

**Tentative Ruling:** The Motion to Value 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.

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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Vanderbilt Mortgage and Finance, Inc (at its agent of service), Chapter 13 Trustee, and Office of the United States Trustee on October 21, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----  
-----.

<p>The Motion to Value secured claim of Vanderbilt Mortgage and Finance, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$43,227.56.</p>
--

The Motion to Value filed by Leah Cherry ("Debtor") to value the secured claim of Vanderbilt Mortgage and Finance, Inc. ("Creditor") is accompanied by

Debtor's declaration. Debtor is the owner of the subject real property commonly known as 137 Hap Arnold Loop, Roseville, California ("Property"), the Debtor's rental property. Debtor seeks to value the Property at a fair market value of \$60,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

## OPPOSITION

Creditor has not filed an opposition.

## DISCUSSION

The senior in priority first tax lien secures a claim with a balance of approximately \$16,775.44. Creditor's second deed of trust secures a claim with a balance of approximately \$122,414.00. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of \$43,227.56 because the Property is not Debtor's residence, and therefore payments in the secured amount of the claim 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 Leah Cherry ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Vanderbilt Mortgage and Finance, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 137 Hap Arnold Loop, Roseville, California, is determined to be a secured claim in the amount of \$43,227.56, 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 \$60,000.00 and is encumbered by senior liens securing claims in the amount of \$16,772.44, which do not exceed the value of the Property which is subject to Creditor's lien.

22. [13-35771](#)-E-13 GREGORY/CHRISTI SMOAK  
ACK-1 C. Anthony Hughes

MOTION TO MODIFY PLAN  
9-18-14 [[27](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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 Modified Plan.**

Gregory and Christi Smoak ("Debtors") filed the instant Motion to Confirm Modified Plan on September 18, 2014. Dckt. 27. The Debtors state that they are seeking to modify the confirmed Plan for the following reasons:

1. The unsecured claims for which a proof of claims has been filed is \$45,039.23; the unsecured claims which were scheduled is \$126,648;
2. Due to the significant difference in the amount actually claimed versus the amount scheduled, a lower payment amount is possible while still satisfying the purpose of the chapter 13 filing
3. The confirmed plan is a plan which proposes to pay 100% to unsecured creditors;
4. The proposed First Modified Chapter 13 Plan will also pay 100% to unsecured creditors, thus creditors will not be prejudiced by the proposed modifications.

The Debtors state that the current plan payment is \$2,871.00 for 60 months. As of the 8<sup>th</sup> payment, the Debtors have paid \$20,097.00. The proposed plan provides for plan payments of \$1,289.00 a month, beginning the 9<sup>th</sup> month until the completion of the plan.

#### **TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed an objection to confirmation of the modified plan on October 21, 2014. Dckt. 35. The Trustee objects on the following grounds:

1. The Debtors' Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are proposing a monthly plan payment of \$1,289.00 per month. The Debtors filed as Exhibits A and B (Dckt. 32) Schedule I and J. Line 23c of Schedule J reflects the ability to pay \$4,207.31 monthly. Form B22C, the chapter 13 Statement of Current Monthly Income, filed December 17, 2013 reflected the commitment period of five (5) years and that disposable income is determined under § 1325(b)(3). Additionally, line 59 reported Monthly Disposable Income as \$4,486.77. Unsecured creditors are to be paid 100% of their claims, but are not being paid interest.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. A review of the plan, petition, and exhibits, it does not appear that the proposed plan is Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are not providing for their full disposable income nor for interest on the unsecured claims.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan for three reasons.

First, it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$685.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$80,847.25 have become due. The Debtor has paid a total of \$80,162.25 to the Trustee, with the last payment posted on June 3, 2014 in the amount of \$800.92.

Second, the Trustee is uncertain of the plan term proposed. section 1.01 provides for payments of \$80,162.25 through May 2014 (month 53 where Debtor's petition was filed on December 9, 2009), then \$685.00 for 2 months starting on June 2014, for a total plan term of 55 months. Section 1.03 proposes a 60 month plan. Debtors are under median income pursuant to Form B22C (Dckt. No. 26). The plan term under the confirmed plan is 60 months. Debtors' Motion, Dckt. No. 79, states that the final two payments will pay the



additional attorney's fees in the amount of \$1,230.00. Debtor's attorney has filed a Motion for Additional Fees, which is scheduled to be heard concurrently with this matter.

Third, Debtor's modified plan proposes to reclassify JPMorgan Chase regarding Debtors' ongoing mortgage and pre and post-petition arrears from a Class 1 secured creditor to a Class 4 secured claim paid directly by Debtor based on a trial loan modification. Debtors filed a Motion for Order Approving Trial Loan Modification, which is scheduled to be heard on this same hearing date. Debtor's modified plan provides no provision should the modified plan be granted, and then Debtors are unsuccessful in obtaining a permanent loan modification. To date, \$432.34 remains to be paid in pre-petition arrears and \$1,576.41 in post petition arrears.

#### **RESPONSE BY DEBTOR**

Debtors respond by stating that they intend to be current, on or before the date of this hearing. Debtors have just two payments left to complete the Plan at 100%. Debtors intended to propose a fifty-five (55) month plan, which they request be corrected in the order confirming the modified plan. The Debtors are under the median income, have satisfied the terms of the plan and liquidation requirements.

Debtors also assert that a Motion to Approve the Loan Modification has been filed and will be heard by this court, and that Debtors have not received any opposition thus far.

#### **JULY 22, 2014 HEARING**

At the July 22, 2014 hearing, the court continued the hearing to 3:00 p.m. on November 4, 2014 to allow the Debtors to obtain a final loan modification with JPMorgan Chase Bank, N.A.

#### **DISCUSSION**

A review of the case docket, shows that on October 21, 2014, the court granted a motion to approve loan modification with JPMorgan Chase Bank, N.A. Dckt. 124. Furthermore, JPMorgan Chase Bank, N.A. filed a Notice of Mortgage Payment Change on October 20, 2014 reflecting the modification.

While the issues concerning the loan modification have been resolved, the case docket does not show that Debtors have provided receipts or proof of payment showing that they are current in the plan payments. Because the court cannot determine if the Debtors are current under the proposed plan, the Plan cannot be confirmed.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

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 22, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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.**

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 creditors. The Chapter 13 Trustee filed a notice of non-opposition on October 20, 2014. 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 22, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. [09-32477](#)-E-13 MELVIN ESPINOZA  
CJY-3 Christian Younger

MOTION TO VALUE COLLATERAL OF  
ALLY BANK  
10-16-14 [[85](#)]

**Tentative Ruling:** The Motion to Value 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

-----  
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, GMAC Mortgage, Ally Bank, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 16, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----  
-----.

<p><b>The Motion to Value secured claim of Ally Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.</b></p>
--

The Motion to Value filed by Melvin Espinoza ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 9115 Linda Rio Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$140,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### OPPOSITION

Creditor has not filed an opposition.

#### DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$221,183.53. Creditor's second deed of trust secures a claim with a balance of approximately \$34,151.13. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Melvin Espinoza ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Ally Bank secured by a second in priority deed of trust recorded against the real property commonly known as 9115 Linda Rio Drive, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$140,000.00 and is encumbered by senior liens securing claims in the amount of \$221,183.53, which exceed the value of the Property which is subject to Creditor's lien.

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
-----

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 October 7, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Extend Automatic Stay 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 non-responding parties 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 Extend the Automatic Stay is granted.**

Felicisimo Sunga ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28037) was dismissed on August 25, 2014, after Debtor failed to timely file necessary documents. See Order, Bankr. E.D. Cal. No. 14-28037, Dckt. 13, August 25, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 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 provides an explanation for why the previous case was dismissed. Debtor filed the first case in haste to halt a pending trustee's sale. When Debtor began to put his petition together along with the other supporting documents, Debtor discovered that he would not have enough time to complete the petition before dismissal. Debtor has now had over two (2) months to gather the necessary documents and assemble his case, as evidenced by the complete schedules, statement of financial affairs, and plan filed in the current case on October 6, 2014. These changes in circumstances show that there is a higher chance of a plan being confirmed.

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.

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.



27. [14-28780-E-13](#) CASEY WADE  
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-8-14 [[17](#)]

**Tentative Ruling:** The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

-----  
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 (*pro se*) on October 8, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Failure to Appear: The Debtor failed to appear and be examined at the First Meeting of Creditors held October 2, 2014. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The Meeting has been continued to December 4, 2014 at 10:30 a.m.

2. Tax Return Not Provided: The Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or written statement that no such documentation exists. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(i).
3. Pay Advices Not Provided: The Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. Filing Fees Not Paid. On or about October 3, 2014, the court issued an Order to Show Cause set for hearing on November 12, 2014 (Dckt. 15). Debtor has not paid the filing fee installment of \$77.00 due on September 29, 2014, pursuant to the Order Approving Payment of Filing Fees in Installments. Dckt. 6.
5. Documents Incomplete: Debtor's plan (Dckt. 7) and Schedules (Dckt. 1) are not filled out properly. Debtor's plan is blank except for Debtor's signature and date. The Schedules fail to list any creditors or income.
6. No Payments: Debtor has failed to commence payments. The case was filed on August 29, 2014, and the plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13

The Trustee's objections are well-taken. While objection 4 is overruled because the Debtor has paid the installment fee on October 8, 2014, the remaining objections are all sustained.

The basis for the Trustee's first objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to the remaining objections, a review of the petition and plan show that there is no information provided for except the signature of the Debtor. There is no plan to confirm because all of the required information in both the petition and the plan are blank. No documentation as required by 11 U.S.C. § 521 has been provided to the Trustee. No plan payments have been made because there is in fact no plan except for a blank plan form with Debtor's signature.

The Debtor has filed barely even a skeletal filing. The Debtor has provided absolutely no information for this court or the Trustee to determine whether the Debtor is even a feasible Chapter 13 debtor. The court notes that there is a pending Motion to Dismiss for Unreasonable Delay and Failure to Make Plan Payments set for November 12, 2014. (Dckt 21).

However, for purposes of the Plan, because the Debtor has failed to appear at the 341 Meeting, provide required necessary documentation to the Trustee, or to file a completed schedules or Plan, 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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

28. [14-28881](#)-E-13 CURTIS/LORRA DARLING  
MRL-2 Mikalah Liviakis

MOTION TO SELL  
10-8-14 [[25](#)]

**Tentative Ruling:** The Motion to Sell Property 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.

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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2014. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Chapter 13 Debtor, Curtis and Lorra Darling, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 921 Beeler Way, Galt, California.

The proposed purchaser of the Property is Jodi A. Revis ("Buyer") and the terms of the sale are:

1. Movant will sell the Property to Buyer for \$347,000.00.

- Debtors will pay the first deed of trust in full from the sale proceeds. Arrow Financial Services, LLC's judgment lien was avoided on October 7, 2014. Dckt. 31. Including costs, Debtors hope to receive \$5,000. to \$10,000.00 in proceeds from the sale.

David Cusick, the Chapter 13 Trustee, filed a response to this Motion on October 14, 2014. The Trustee states that the property is subject to the lien of Green Tree Servicing, LLC in the amount of \$310,000.00 and the judgment lien of Arrow Financial Services in the amount of \$9,967.83. The first deed of trust will be paid in full from the proceeds of the sale, but the Trustee is concerned that a sale without protecting the possible lien rights of Arrow Financial Services is inappropriate at this time. The avoidance of the judicial lien of Arrow Financial Services (Order, Dckt. 34) is subject to vacated by operation of law pursuant to 11 U.S.C. § 349 if the Debtors fail to complete the plan and this bankruptcy case is dismissed. Currently, Debtors have not confirmed a plan and are delinquent to the plan.

The sale is being made "free and clear" (notwithstanding the court not granting relief pursuant to 11 U.S.C. § 363(f)) based on the Debtors having avoided the judicial lien of Arrow Financial. However, the order avoiding the lien is itself subject to statutory "vacating" and the lien is reinstated pursuant to 11 U.S.C. § 349(b)(1)(B). Only once the plan has been completed that the modification of the respective rights and interests of the parties are final.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The court acknowledges the Trustee's concerns and, in granting this motion, requires Debtor's attorney to

hold the net proceeds from the sale in trust until the Court issues a further order.

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 Sell Property filed by Curtis and Lorra Darling, the Chapter 13 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 Curtis and Lorra Darling, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Lori A. Revis or nominee ("Buyer"), the Property commonly known as 921 Beeler Way, Galt, California("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$347,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 28, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. All proceeds remaining after payment of the above costs and the liens senior in priority to the avoided Judicial Lien of Arrow Financial (Order avoiding lien pursuant to 11 U.S.C. § 522(f), Dckt. 34) shall be disbursed directly from escrow to the Chapter 13 Trustee, David Cusick. The Chapter 13 Trustee shall hold said proceeds, which shall not be disbursed except upon further order of the court.
4. The Chapter 13 Debtors be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

**IT IS FURTHER ORDERED** that the avoided lien of Arrow Financial Services, LLC shall attach to the sale proceeds disbursed to the Chapter 13 Trustee, in the same amount, extent, order, and validity as it existed in the Property sold, subject to the Order Avoiding the Judicial Lien (Dckt. 34) and the provisions of 11 U.S.C. § 349(a)(1).

29. [14-29494](#)-E-13 MARCELO BAUTISTA  
SDB-1 Scott de Bie

MOTION TO VALUE COLLATERAL OF  
PATELCO CREDIT UNION  
10-7-14 [[19](#)]

**Final Ruling: No appearance at the November 4, 2014 hearing is required.**  
-----

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 Patelco Credit Union, Chapter 13 Trustee, and Office of the United States Trustee on October 7, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 non-responding parties 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 secured claim of Patelco Credit Union ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Marcelo Bautista ("Debtor") to value the secured claim of Patelco Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 967 Griffin Drive, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, 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 valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **OPPOSITION**

Creditor has not filed an opposition.

#### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$345,732.00. Creditor's second deed of trust secures a claim with a balance of approximately \$20,612.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Marcelo Bautista ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Patelco Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 967 Griffin Drive, Vallejo, 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 \$275,000.00 and is encumbered by senior liens securing claims in the amount of \$345,732.00, which exceed the value of the Property which is subject to Creditor's lien.