

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

**November 19, 2013 at 2:00 p.m.**

---

1.     [13-26003](#)-C-13     SCOTT/MICHELLE GONZALES     MOTION TO CONFIRM PLAN  
RAH-4                 Richard A. Hall                 9-25-13 [[68](#)]

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 25, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**November 19, 2013 at 2:00 p.m.**

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 25, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [13-31505](#)-C-13 KAO SAELEE  
NLE-1 Catherine King  
**Thru #3** OBJECTION TO HOMESTEAD  
EXEMPTION  
10-15-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 15, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee states that Debtor may not be entitled to the homestead exemption on the real property commonly known as 1494 Murieta Loop, Redding, California. Debtor has filed only one Schedule J. Debtor's driver's license presented at the First Meeting of Creditors on October 10, 2013, reflects that Debtor's address is 1010 Monterra Lane, Redding, California.

Debtor's Schedule J also reflects that Debtor has three children, ages 7, 9, and 14, and a spouse. Schedule A reflects that Debtor's spouse is living at 1010 Monterra Lane, and does not show where Debtor lives, although it discloses that Debtor's father lives at 1494 Murieta Loop.

Per Trustee's request, this matter will be set for an evidentiary hearing on [date] at [time]. As Trustee states, is unclear whether Debtor is entitled to claim the 1494 Murieta Loop property as his homestead and to exempt the subject property. Debtor will be given the opportunity to provide evidence that the 1494 Murieta Loop property meets the definition of "homestead" under California Code of Civil Procedure § 704.710 by demonstrating the property is his principal dwelling, and that he and/or his spouse resides in it, has continuously occupied the dwelling, and other requirements of claiming the homestead exemption under the statute.

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 Homestead Exemption filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Homestead Exemption is set for an evidentiary hearing on **[date]** at **[time]**.

3. [13-31505](#)-C-13 KAO SAELEE  
NLE-2 Catherine King  
OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
10-15-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 15, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) The Plan may not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor has claimed a homestead exemption on Schedule C under the Code of Civil Procedure § 704.730, in the amount of \$100,000.00. Trustee states that it does not appear that Debtor is entitled to the homestead exemption on the real property located at 1494 Murieta Loop, in Redding California, as Debtor's driver license presented at the First Meeting of Creditors on October 10, 2013, listed his address at 1010 Monterra Lane, in Redding California.

Thus, Debtor's non-exempt assets would total \$106,855.00 (\$6,855.00 non-exempt is from three automobiles listed on Debtor's Schedule B, and not fully exempted on Schedule C). Debtor is proposing a 15% dividend to unsecured creditors, which totals \$4,902.00. Trustee's Objection to Exemptions, NLE-1, regarding this property is set for hearing on November 19, 2013.

(2.) Debtor cannot make payments pursuant to 11 U.S.C. § 1325(a)(6). Debtor receives \$489.00 per month from his father for part of the mortgage payment, which is listed on Schedule I. Debtor has not provided, however, a

declaration of supporting evidence from his father, which indicates the father's willingness and ability to contribute this income to Debtor.

According to the Statement of Financial Affairs, #8, Debtor incurred \$8,000.00 in gambling losses from December 2012, through July 3, 2013. Debtor has not provided any evidence to Trustee that he is no longer gambling.

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

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

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

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

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

4. [13-28106](#)-C-13 CANICE/MONICA NJOKU  
MAC-2 Marc A. Caraska

MOTION TO CONFIRM PLAN  
9-30-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 1, 2013. 42 days' notice is required. That requirement was met.

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

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed an opposition to Debtors' Motion to Confirm. The Trustee objects to confirmation of Debtors' Plan on the basis that the Plan does not represent Debtors' best efforts under 11 U.S.C. § 1325(b).

Debtors are over the median income and propose the following Plan payments: \$100.00 for 60 months with a 3% dividend to unsecured creditors, which totals \$2,421.00. Debtors received the following tax refunds: \$8,125.00 in the 2011 tax year, and \$5,392.00 in the 2012 tax year.

Debtors' Declaration, which was filed in support of this motion (Dckt. No. 46), states "As evidenced by the current pay stubs that were provided to the Trustee, we both adjusted our federal and California withholdings prior to the filing of our bankruptcy case in order to eliminate the large tax refunds we had previously received. We, therefore, anticipate there will be no federal or California income tax refunds during the term of our Chapter 13 case."

Debtor Canice Njoku provided Trustee with official pay advices from the State of California, for the pay periods of May, 2013, and June, 2013. The May 2013 pay advice does not provide for an income tax deduction (Exhibit A). The June pay advice provides an income tax deduction of \$274.62 for federal taxes and \$79.77 in state taxes (Exhibit B).

Debtors' Schedule I reflects a monthly income tax deduction of \$1,540.00, which is 24% of Debtors' gross income; the pay advices furnished,

however, do not show this amount being deducted. Trustee also points out that the pay advice reflects vacation hours of 1,029.90.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.



5. [11-37307](#)-C-13 SUKRU/GULAY BAYRAMOGLU MOTION FOR COMPENSATION BY THE  
EJS-3 Marc A. Caraska LAW OFFICE OF NELSON & SCHWAB  
FOR ERIC JOHN SCHWAB, DEBTOR'S  
ATTORNEY(S), FEE: \$1,105.00,  
EXPENSES: \$0.00  
10-31-13 [[124](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2013. 14 days' notice is required. That requirement was met.

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

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

#### **FEES REQUESTED**

Eric J. Schwab ("Movant"), Counsel for Debtors, files a First Interim Application for Attorneys' Fees in this case for \$1,105.00 and \$0.00 in fees. The period for which the fees are requested is for the period of November 1, 2012 through October 31, 2013. A Substitution of Attorney was entered on November 27, 2012, substituting Movant in place of Debtors in pro se as the attorney of record.

#### **Description of Services for Which Fees Are Requested**

Movant provided his billing statement in this case, attached to the instant application as Exhibit "A." Movant did not describe detailed descriptions of the work performed on the case, but does break down the time spent on the case with the labels indicating when and how much Movant charged for client meetings, document reviews, attending hearings on objection to claims, time spent drafting letters, filing motions to modify, and other tasks.

November 19, 2013 at 2:00 p.m.

In his application, Movant specifically highlights his preparation of Debtors' Motion to Value Collateral, which was heard and granted on June 21, 2013, along with a Motion to Modify Debtors' Chapter 13 Plan, which was heard and granted on October 22, 2013. Movant claims that he did not receive any fees before subsisting into the case and now seeks to be paid by filing and serving the present motion in accordance with 11 U.S.C. § 329 and 339, FRBP 2002, 2016, and 2017.

## **DISCUSSION**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

## **Benefit to the Estate**

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

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

*Id.* at 959.

A review of the application shows that Movant's services rendered a successful Motion to Value Collateral and Motion to Modify Plan. The total fees sought by Movant is \$1,105.00, which is substantiated by clear billing statements provided by Movant on this application as Exhibit "A." The court finds the services were beneficial to the estate and reasonable.

The court also notes that Chapter 13 Trustee David Cusick has filed a statement of non-opposition to this Motion for Compensation.

#### **FEES ALLOWED**

The hourly rates for the fees billed in this case are \$325.00/hour for Movant Counsel. The court finds that the hourly rates, and the request for a total of \$1,105.00 to be reasonable. These fees are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$ 1,105.00
Costs and Expenses	\$ 0.00

For a total final allowance of \$1,105.00 in Attorneys' Fees and Costs in this case.

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

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

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

**IT IS ORDERED** that Eric J. Schwab is allowed the following fees and expenses as a professional of the Estate:

Eric J. Schwab, Counsel for the Trustee  
Applicant's Fees Allowed in the amount of: \$ 1,105.00  
Applicants Expenses Allowed in the amount of: \$ 0.00,

**IT IS FURTHER ORDERED** that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

6. [12-37210](#)-C-13 JAMES JOHNSON AND SHEILA MOTION TO MODIFY PLAN  
BLG-1 NEWELL 9-25-13 [[31](#)]  
Bruce Charles Dwiggins

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 25, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 25, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the

November 19, 2013 at 2:00 p.m.

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

7. [13-26112](#)-C-13 ROBERT/CATHERINE WONG MOTION TO CONFIRM PLAN  
MAC-5 Marc A. Carpenter 9-30-13 [[69](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 30, 2013 is confirmed, and counsel for

**November 19, 2013 at 2:00 p.m.**

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

8. [13-32414](#)-C-13 CHRISTOPHER/JESSICA OBJECTION TO CONFIRMATION OF  
TSB-1 KNIGHT PLAN BY DAVID CUSICK  
Brandon Scott Johnston 10-30-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtor Christopher Knight did not appear at the First Meeting of Creditors held on October 24, 2013. The Meeting has been continued to November 21, 2013 at 10:30 am. Appearance at the meeting of creditors 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).

(2.) Debtors cannot make the payments under the Plan or comply with the Plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on pending

Motions to Value. Debtors propose to value the secured claims of Karen Frank and Nationstar Mortgage, but have not filed motions to value the collateral of these creditors.

(3.) Debtors' Plan may not represent their best efforts under 11 U.S.C. § 1325(b). Debtors are above median income and propose a 60 month plan paying \$500.00 per month, with a dividend of 3% to unsecured claims.

Debtors deduct \$900 per month for childcare on their Schedule J, but Debtor Jessica Knight admitted at the Meeting of Creditors on October 24, 2013, that the expense will be reduced to \$500 per month effective next year, when Debtors' child begins kindergarten. Trustee notes, upon reviewing Debtors' 2012 Tax Return, that Debtors reported \$8,177.00 in childcare expenses in 2012, which is equivalent to approximately \$682 per month. Trustee requests that Debtor's Plan be increased by \$400, to go into effect on September, 2014 for a total plan payment of \$900 per month.

Thus, as it stands Debtors' Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and (b). The objection is sustained and the Plan is not confirmed.

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

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

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

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



9. [11-39617](#)-C-13 EDWARD/JENE RANDLE  
SDB-2 W. Scott de Bie  
**Thru #10**

MOTION TO MODIFY PLAN  
9-16-13 [[58](#)]

**Final Ruling:** Edward and Jene Randle, the Debtors, having filed Request to Withdraw on November 12, 2013, Dckt. 88, for the Motion to Modify Debtors' Chapter 13 Plan, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by Creditors, the *ex parte* request to dismiss is granted, the Motion is dismissed without prejudice, and the court removes the Motion from the calendar.

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 Modify Chapter 13 Plan filed by Edward and Jene Randle, the Debtors, ("Movant") having been presented to the court, the court concluding that Movant has requested that the Motion be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 88, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed without prejudice.

10. [11-39617](#)-C-13 EDWARD/JENE RANDLE CONTINUED OBJECTION TO CLAIM OF  
SDB-3 W. Scott de Bie ONEWEST BANK, FSB, CLAIM NUMBER 7  
9-16-13 [[65](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 16, 2013. Forty-four (44) days' notice is required. That requirement was met.

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

**The Objection to Proof of Claim number 7 of Onewest Bank, FSB is sustained and the claim is allowed in the amount of \$523,491.46.** No appearance required. The court makes the following findings of fact and conclusions of law:

This matter was continued from November 5, 2013, to November 12, 2013 pursuant to a stipulation that was filed on October 29, 2013 as Docket Entry Number 73. The court approved the stipulation, which memorialized the parties' agreement to continue the hearing, and established the new deadline of November 5, 2013, for Respondent Claimant to file a response. No further response was received, however, from Claimant OneWest Bank, FSB on this matter.

Debtors take issue with Creditor's Proof of Claim, which is listed as claim number 7 on the court's official claims registry and asserts a \$533,861.39 claim. The Debtor objects to \$41,338.70 of arrearage included in the Claim, on the basis that the claim duplicates the amount owing for taxes and insurance delinquencies.

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

(9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The claim filed by Onewest Bank, FSB, alleges that Debtors were delinquent ten (10) payments at the time the petition was filed, but specify these payments as \$2,229.97 per month. It appears OneWest is incorporating the required tax and insurance amounts into this delinquency. The claim then adds to this a separate additional sum for an "escrow shortage" The claim duplicates the tax and insurance debt, first as an exaggerated monthly payment, and then again as a separate charge. Debtors assert that the principal and interest delinquency is \$18,849.60 and that the "escrow shortage" is \$7,601.22. Accounting for late charges of \$847.98 and allowed pre-petition fees and costs of \$3,670.44, the arrearage portion of the claim should total \$30,968.77.

Based on the evidence before the court, the portion of Creditor's claim allocated to arrearage is allowed in the amount of \$30,968.77. This reduces the total amount of the allowed secured claim to \$523,491.46.

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 OneWest Bank, FSB filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 7 of Onewest Bank, FSB is sustained and the claim is allowed in the amount of \$523,491.46.

11. [11-32020](#)-C-13 KAO SAETEURN AND FAHM MOTION TO MODIFY PLAN  
CJY-2 SAECHAO 10-9-13 [[79](#)]  
Christian J. Younger

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 October 9, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on October 9, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if

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

12. [13-23022](#)-C-13 JAY REESE  
PD-1 Stephen J. Johnson  
**Thru #13**  
U.S. BANK, N.A. VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
9-10-13 [[54](#)]

Local Rule 9014-1(f)(1) Motion - Response Filed by Chapter 13 Trustee  
No Opposition filed by Debtor

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 10, 2013. 28 days' notice is required. This requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

This hearing was continued from October 8, 2013 to this hearing date. Creditor, U.S. Bank National Association, solely as Trustee for the RMAC Trust, Series 2013-4T, seeks relief from the automatic stay with respect to the real property commonly known as 16133 Aurora Way, Meadow Vista, California. The moving party has provided the Declaration of Bertha A. Culp to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Culp Declaration, dated August 30, 2013, states that Debtor has not made 5 post-petition payments, with a total of \$16,723.85 in post-petition payments due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$701,304.64, as stated in the Laubler Declaration, while the value of the property is determined to be \$509,853.00, as stated in Schedules A and D filed by Debtor.

**Trustee's Response**

Trustee maintains that Debtor is current under the proposed plan filed September 9, 2013, and that Debtor has paid a total of \$1,000 to date. Debtor's proposed plan (Dckt. #48) includes the property in Class I, and reports the Creditor as Bank of America, N.A.

Debtor scheduled \$16,723.85 in arrears and a monthly contract installment of \$3,220.00 in Class I of the proposed plan, and proposes payments of \$200.00 for months 1-9, followed by payments of \$3,770.76 for months 10-60. Debtor is currently in month 6 of the plan. Debtor did not propose any additional provisions regarding the Class 1 monthly contract installment. According to the Trustee and the accompanying Declaration of Ed Weedman, filed September 11, 2013, Debtor is current on the payments of \$200.00 per month to date.

A review of the Debtor's Amended Plan, filed on September 9, 2013, shows that Debtor scheduled \$16,723.85 in arrears and that Debtor proposed submitting a monthly payment of \$200.00 from his earnings to complete the Plan.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, Trustee has filed a reply indicating that Debtor is current in his payments to the Plan. Trustee included in his reply a history of the receipts for payments tendered in this case. Debtor appears to be current in his proposed Plan, and with Creditor's claim listed as a Class 1 Claim. Since Debtor has made post-petition payments on the property, cause does not exist for terminating the automatic stay.

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 Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion for Relief from the Automatic Stay is denied.

13. [13-23022](#)-C-13 JAY REESE  
SJJ-3 Stephen J. Johnson

MOTION TO CONFIRM PLAN  
9-9-13 [[49](#)]

**Final Ruling:** The Debtors having filed a Withdrawal of the Motion to Motion to Confirm Second Amended Chapter 13 Plan on November 12, 2013, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Confirm Second Amended Chapter 13 Plan was dismissed without prejudice, and the matter is removed from the calendar.**

14. [13-29322](#)-C-13 ROSANNA MAGNISI  
PGM-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
10-4-13 [[47](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 4, 2013. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [13-30323](#)-C-13 KIMBERLY JOHNSTON MOTION TO VALUE COLLATERAL OF  
JLB-1 James L. Brunello GREEN TREE SERVICING, LLC  
**Thru #16** 9-26-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 26, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor, Kimberly Johnston, is the owner of the subject real property commonly known as 3160 Cedar Ravine, Placerville, California. The Debtor seeks to value



the property at a fair market value of \$276,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan from Bank of America Home Loans, with a balance of approximately \$346,106.00. Creditor Green Tree Servicing, Inc.'s second deed of trust secures a loan with a balance of approximately \$38,862.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor 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 Green Tree Servicing, Inc. secured by a second deed of trust recorded against the real property commonly known as 3160 Cedar Ravine, Placerville, 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 \$276,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

16. [13-30323](#)-C-13 KIMBERLY JOHNSTON CONTINUED OBJECTION TO  
NLE-1 James L. Brunello CONFIRMATION OF PLAN BY DAVID CUSICK  
9-26-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 26, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee initially opposed confirmation of the Plan because Debtor could not afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relied on a Motion to Value the secured claim of Green Tree and, as of the time of Trustee's Objection, Debtor had not filed a Motion to Value.

Debtor responded by bringing to the Trustee's attention that a Motion to Value the secured claim of Green Tree Servicing, LLC, was later filed on September 26, 2013 and set for hearing on November 19, 2013 at 2:00 pm. The hearing on Trustee's Objection was continued to this date so that this matter could be heard in conjunction with Debtor's Motion.

The court's final ruling on Debtor's Motion to Value the Claim of Green Tree Servicing, Inc. (JLB-1) is to grant the motion. The court's decision resolves Trustee's concerns and renders this Objection moot. The Plan now complies with 11 U.S.C. §§ 1322 and 1325(a) and is hereby confirmed.

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

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

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

**IT IS ORDERED** that the Trustee's Objection to Confirmation is overruled as moot.

17. [13-32123](#)-C-13 REMIGIO/JEANNIE PINGUL OBJECTION TO CONFIRMATION OF  
TSB-1 Stephen M. Reynolds PLAN BY DAVID CUSICK  
10-30-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is to continue the Objection to Confirmation on December 10, 2013.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors' Plan relies on a pending motion, and therefore Debtors cannot afford to make the payments of comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value Collateral of Bank of America, N.A., RLC-1, which is set for hearing on December 10, 2013. The court will continue the hearing on the instant objection to that date, so that Debtor's motion and Trustee's objection can be resolved together.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is continued to December 10, 2013 at 2:00 pm, to be heard in

conjunction with Debtors' Motion to Value Collateral of Bank of America, N.A.

18. [13-31627](#)-C-13 DAVID/KAREN BORBA MOTION TO VALUE COLLATERAL OF  
JLB-1 James L. Brunello INDYMAC MORTGAGE SERVICES  
Thru #19 10-3-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 3, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtors' declaration. Debtors, David and Karen Borba, are the owners of the subject real property commonly known as 2158 Huntington Circle, El Dorado Hills, California. The Debtors seeks to value the property at a fair market value of \$850,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan from IndyMac Mortgage Services, with a balance of approximately \$973,000.00. The same creditor holds an interest in a home equity line of credit secured by the subject property, in the amount of \$197,000.00. Therefore, the respondent creditor's secured interest in the equity line is completely under-collateralized. The creditor's second secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The

valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of IndyMac Mortgage Services secured by second deed of trust recorded against the real property commonly known as 2158 Huntington Circle, El Dorado Hills, 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 \$973,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

19. [13-31627](#)-C-13 DAVID/KAREN BORBA CONTINUED OBJECTION TO  
TSB-1 James L. Brunello CONFIRMATION OF PLAN BY DAVID  
CUSICK  
10-10-13 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The court continued the hearing on Trustee's Objection from November 5, 2013 to this hearing date, to be heard concurrently with Debtors' Motion to Value the secured claim of IndyMac Mortgage Services. The continuance was also granted to give Trustee more time to review the amendments filed by Debtor in response to the Objection. Nothing further has been filed to determine whether Trustee's concerns regarding the confirmation of the Plan have been remedied.

The Chapter 13 Trustee initially opposed confirmation of the Plan for the following reasons:

1. Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a pending Motion to Value the secured claim of Indymac Mortgage Services, which is set for hearing on November 19, 2013. If the Motion is not granted, Debtors' plan lacks sufficient funds to pay the claim in full. Furthermore, Debtors' Schedule I does not list any payroll deduction for medical insurance expenses. A review of the pay advices provided to the Trustee indicate that Debtor has \$420.44 deducted from each paycheck for health and dental.

Debtors' Motion to Value the Collateral of Indymac Mortgage services will be granted and Indymac's secured claim in Debtors' equity line is determined to be \$0.00. Therefore, this part of Trustee's objection is resolved and will be overruled as moot.

2. Debtors' plan may not be their best effort. 11 U.S.C. § 1325(b). First, Debtors' pay advices indicated that Debtor David Borba earns more than what is listed on Schedule I. The paystubs provided to Trustee show an average gross income of \$3,839.04 per paycheck, which amounts of \$8,317.92 per month. Schedule I lists gross income as \$7,465.57.

Second, the Declaration of Maria Manuela Rabadon, in support of confirmation (Dkt. 21), states that Declarant, Debtor Karen Borba's motion, lives with Debtors and contributes \$500.00 to \$1,000.00 per month to Debtors. The income is not disclosed on Schedule I and is not listed in the Statement of Financial Affairs or the Statement of Current Monthly Income.

3. Debtor does not completely provide for the secured claim of Indymac Mortgage Services. Indymac is listed in Class 4 of the plan at a monthly payment of \$3,760.84 on the first deed of trust. Creditor Indymac filed an Objection to Confirmation (Dkt. 14) indicated that mortgage arrears of \$4,561.02 were not provided for in the plan. Not providing for treatment of Indymac's entire claim, may demonstrate that Debtor cannot afford the plan payments because of additional debtors, or that Debtor wishes to conceal the proposed treatment of a Creditor.
4. A review of Debtors' 2012 Federal Tax Return indicates that on Line 16a of the Return, Debtors had pension and annuity income of \$61,000.00 in 2012. This income is not disclosed on Debtors' Statement of Financial Affairs.

### **Debtors' Response**

In reply to Trustee's Objection, Debtors filed the Declaration of David Borba (Dkt. 30), in which they alerted the Trustee that they subsequently filed a Motion to Value the secured claim of Indymac Mortgage Services on this hearing date.

Declarant David Borba also stated he filed the following amendments:

(1.) Amendment correctly stating his gross income with health insurance deductions; and

(2.) Amendment of Statement of Financial Affairs, listing annuity income.

As for income from Debtors' Mother-in-Law, Declarant stated she contributes monthly as needed, when his wife suffers from mental health issues. Declarant also claimed that Debtors were current on their loan with Indymac Mortgage on the date of filing.



## **Deutsche Bank National Trust Company Reply**

Deutsche ("Creditor") replied to Debtors' declaration and stated that a proof of claim evidencing the arrears claimed in the amount of \$4,561.02 was filed on October 16, 2013 as Claim 2-1. Creditor reiterated that as set forth in the attachment to their claim, Debtors are still delinquent in \$805.83 in escrow shortage and one installment payment of \$3,755.84. Creditor stated that it is researching this issues further in light of the documents provided in Debtor's David Borba's declaration and will supplement this reply as appropriate.

Creditors have not, however, filed anything further regarding Debtors' arrearage and the calculation of the amount necessary to cure Debtors' default on Creditor's loan. Moreover, Creditor's Objection to Confirmation of the Plan was overruled on November 14, 2013, in light of Debtor David Borba supplying statements from IndyMac Mortgage Services. The statements reflected that Debtor had paid in a timely manner in August, September, and October of 2013, and that there was no past due amount. Debtors' Exhibit D shows Debtors' loan activity, and showed that Debtors were current on their payments when the bankruptcy was filed.

It appears that Trustee and Creditors' concerns have been resolved by Debtors' supplemental paperwork. In the absence of further responses from either and all parties, the court's decision is to overrule the objection. The court shall issue a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that Objection to Confirmation of Plan by Chapter 13 Trustee David Cusick is overruled.

20. [13-28930](#)-C-13 STEVEN/ROBERTA MOTION TO CONFIRM PLAN  
AJP-1 CHRISTENSON 9-17-13 [[26](#)]  
Al J. Patrick

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 17, 2013. 42 days' notice is required. That requirement was met.

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

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Internal Revenue Service ("Service"), has filed an objection to the confirmation of Debtors' First Amended Plan. The Service holds a secured claim in the amount of \$32,300, an unsecured priority claim in the amount of \$83,350.13, and an unsecured general claim in the amount of \$87,207.32. The Service filed its initial Proof of Claim on July 11, 2013 (claim no. 1-1) and an amended Proof of Claim on August 5, 2013 (claim no. 1-2). The Service opposes confirmation of this Amended Plan on the following grounds:

1. The Plan does not fully provide for the Service's secured claim. Debtors' schedules provide that the Debtors have personal property valued at \$32,800. The Service's lien attaches to this property; therefore the Service asserts that it has a secured claim of \$32,800.
2. While Debtors' Plan cures the issues which were present in their original plan, it does not provide for interest on the Service's secured claim. Paragraph 2.09 of the debtors' plan states that zero interest is to be paid on secured claims. The current rate of interest is 3%.
3. Debtors' Amended Schedule J provides that the Debtors are paying taxes of \$2,200 a month toward their quarterly estimated taxes. However, Debtors have not made any quarterly payments since June.

The Service argues that Debtors' Plan may not be feasible under 11 U.S.C. § 1325(a)(6) because Debtors have not paid any of the quarterly payments referenced in their Amended Schedule J. Debtors are claiming an expense for taxes, but are not paying their taxes with the funds claimed. The Service believes that since Debtors are not making their quarterly payments, Debtors are likely going to have an outstanding tax liability at the end of the year, and Debtors will only be able to make their plan payments since they are not making their required estimated tax payments.

Based on the deficiencies highlighted by the Service, the court determines that Debtors' First Amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.

21. [13-29532](#)-C-13    MICHAEL CRONE AND                    MOTION TO VALUE COLLATERAL OF  
RWH-1                    CELESTINA YSAIS                    GREEN TREE  
                             Ronald W. Holland                    9-24-13 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 23, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 440 Porter Road, Folsom, California. The Debtor seeks to value the property at a fair market value of \$444,971.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust, held by Wells Fargo Bank, N.A., secures a loan with a balance of approximately \$356,600.00. The second deed of trust, held by Chase, secures a loan with a balance of approximately \$114,475.00. Creditor in this case, Green Tree Servicing, LLC, holds a third deed of trust that is secured in the amount of \$20,995.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by 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 Green Tree Servicing, LLC secured by a third deed of trust recorded against the real property commonly known as 440 Porter Road, Folsom, 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 \$444,971.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

22. [13-32432](#)-C-13 JEFFREY/RACHELLE FILER OBJECTION TO CONFIRMATION OF  
TSB-1 Dale A. Orthner PLAN BY DAVID CUSICK  
10-30-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) The Plan may be causing unfair discrimination to unsecured creditors, under 11 U.S.C. § 1325(a)(3) and 11 U.S.C. § 1322(b)(1). See also *In re Sperna*, 173 B.R. 654 (9<sup>th</sup> Cir. BAP 1994). Debtor lists on Schedule D a vehicle loan held with Schools Financial Credit Union. Debtor Jeffrey Filer admitted at the Meeting of Creditors held on October 24, 2013, that the loan was not a purchase money security. On October 11, 2013, Schools Credit Union filed Court Claim #5, which appears to confirm that Debtors used their 2006 Honda Odyssey as collateral to obtain a loan with the credit union.

Based on the testimony of Debtor and the Proof of Claim, it appears that the claim should be listed in Class 2 of the Plan, and may be eligible for a Motion to Value Collateral, as the collateral is valued at \$8,000.00 and the claim is for \$21,000.00. The claim verifies that the final payment on the loan is June, 2018, which is within the life of the Plan.

(2.) Debtors' Plan does not provide for the secured claim of RC Willey's secured lien on furniture that was purchased on July, 2013. Although Debtors list the claim on Schedule F, RC Willey filed Court Claim #3-1 for a secured claim of \$1,908.00. It appears that this claim should

either b provided for in Class 2 of the Plan, or be surrendered as a Class 3 claim.

Debtor's Plan does not provide for the secured claim of First National Bank of Omaha's secured judgment lien. Although Debtors list the claim on Schedule F, First National Bank of Omaha filed Court Claims #1 and #2, with a secured amount of \$11,204.55. It appears that this claim should be provided for in Class 2 of the Plan with a Motion to Avoid Lien filed to determine the value of the secured claim.

Although treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), the fact that this Plan does not provide for certain secured claims raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). Debtor may not be able to afford payments called for under the Plan or want to conceal the proposed treatment of a creditor.

(3.) Debtors' Plan may not pass muster under the Chapter 7 liquidation analysis provided for by 11 U.S.C. § 1325(a)(4). Debtors list on their Voluntary Petition a "DBA Filer Moving and Storage", and references the operation of a business on the Statement of Financial Affairs #18. Debtors have not listed any interest in a business on Schedule B, not do Debtors list any business equipment. An online search on the Secretary of State's business portal website shows Debtor, Jeffrey Filer is registered as the Agent for Service of Process of Filer Moving and Storage (Exhibit A). Debtors have not disclosed any interest and equipment for the business, and must do so on their Schedule B.

(4.) Trustee is uncertain if Debtors' Plan has been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) or is Debtors' best effort under 11 U.S.C. § 1325(b). It appears that Debtors are over median income, as they report an average monthly income of \$13,731.00. According to Form B22C, the Statement of Current Monthly Income, Debtors list ordinary and necessary business expenses of \$8,577.00. Business expenses should have been deducted below line #23. Debtors have not properly completed their CMI contrary to 11 U.S.C. § 1325(b)(1)(B), *Drummond v. Wiegand (In re Wiegand)*, 2008 Bankr. LEXIS 1256 (B.A.P. 9<sup>th</sup> Cir., Apr. 3, 2008).

(5.) Trustee is unable to determine the feasibility of the Plan, as Debtor did not file a business budget detailing their business income and expenses. Debtors' Schedules I and J list \$13,700.00 in business income and \$8,500.00 in business expenses, but does not include an attachment breaking down those expenses.

(6.) Debtors are \$187.00 delinquent in their Plan payments to Trustee to date, and the next scheduled payment of \$187.00 is due on November 25, 2013. Debtors have paid \$0.00 into the Plan to date.

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

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

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

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

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



23. [13-23437](#)-C-13 MARK/LAURIE CARMICHAEL OBJECTION TO CONFIRMATION OF  
NLE-1 David M. Brady PLAN BY DAVID CUSICK  
10-15-13 [[55](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 15, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtors are delinquent \$253.31 in Plan payments to Trustee to date, and the next scheduled payment of \$253.31 is due on October 25, 2013.

(2.) Debtors have not provided Trustee with any Employer Payment Advices received 60 days prior to filing, as required by 11 U.S.C. § 521(a)(1)(B)(iv).

(3.) Trustee asserts that Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes payments of \$253.31 for 60 months with a 9% dividend to unsecured creditors, which totals \$10,304.00. Debtors' Form B22C reflects monthly disposable income of \$253.31 for 60 months, totaling \$15,198.60. Based on Trustee's review of Form B22C, however, Line #59 reflects \$2,133.31 for 60 months, totaling \$127,998.

Trustee takes issue with the following lines from Form B22C:

(A.) Line #24A, National Standards for food, apparel, and services, etc.: deduction of \$1,389.00; however Debtor used the incorrect

standard IRS deduction. For cases filed on March 14, 2013, the appropriate standard deduction is \$1,029, for a difference of \$360.00.

(B.) Line #25A shows a deduction of \$625.00 for local standards for housing and utilities. However, for cases filed on March 14, 2013, the appropriate deduction is \$523.00, for a difference of \$102.00.

(C.) Line #27A for a transportation deduction of \$1,282.00 is incorrect, because the appropriate standard deduction is \$672.00, for a difference of \$610.00.

(D.) Line #30 for Taxes shows a deduction of \$1,466.74; however, Schedule I reflects a deduction of \$1,212.00 for taxes, making a difference of \$245.00.

(E.) Line #36 is for healthcare, with a deduction of \$90.00. This expense is not listed on Debtors' Schedule I or J.

(F.) Line #37 for telecommunications: deduction of \$169.00, but the expense is listed on J as "Telephone", which is not permitted to be deducted on this form.

(G.) Line #40 continued contributions to the care of household or family members, with a deduction of \$260.00. Debtors, however, list an expense of \$200.00 on Schedule J for support, and Debtor has not provided any documentation for this expense.

(H.) Line #44 for additional food and clothing shows a deduction for \$35.00, but Debtor has not demonstrated why this additional amount is reasonable and necessary.

(4.) Debtors' Plan may not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor listed the value of the real property located at 503 Fir Street, Bieber, California as \$60,645.00 when this case was filed on March 14, 2013 as a Chapter 7. Trustee is not certain of the current value of the property, and asked Debtors' counsel to provide a copy of the recent Brokers Price Opinion that they obtained, but Trustee has yet to receive a copy.

(5.) Debtor cannot make Plan payments, as Debtor's projected disposable monthly income listed on Schedule J reflects \$52.56, and Debtor is proposing plan payments of \$253.31.

(6.) Plan may not have been filed in good faith under 11 U.S.C. § 1325(a)(3) and may unfairly discriminate against general unsecured claims under 11 U.S.C. § 1322(b)(1). Debtors' Plan has only one class of unsecured claims, Class 7, and unsecured claims are to be paid no less than 95%. Schedule J filed by Debtor shows that Debtor is paying \$240.00 to Sallie Mae, and \$67.00 to the Department of Education. Line 19 does not show that Debtor expects this to change in the upcoming year. Unsecured claims are estimated at \$154,380.20, the total of Schedules F and the unsecured part of Schedule D, including the student loan claims. Debtor has

not explained the reason for the Plan paying money towards the student loans at the same time that Debtor is paying them directly.

(7.) Debtor purchased a 2013 Honda Accord on March 8, 2013, less than a week before filing this case as a Chapter 7. This purchase resulted in an ongoing payment of \$575.32, and a debt of \$31,034.83 which the Debtor reported on Schedule D as \$32,713.00 with the value of only \$28,000.00. This debt was incurred on the same day as the payment of a \$5,000 retainer to Debtors' attorney, the action of Debtors filing this petition may not have been in good faith under 11 U.S.C. § 1325(a)(7).

### **Debtor's Response**

Debtors filed a response on November 15, 2013. Debtors state that Debtor husband was laid off by a previous employer that had filed for bankruptcy. In order to continue to provide for his family, Debtor husband obtained employment with North American Energy Services. This is a business which operates and maintains power plants. Debtor husband took an entry-level position with them, earning approximately \$10.50 an hour; in his previous employment, however, Big Valley Lumber had been earning \$19 an hour. Debtors state that because of this pay cut, Debtor husband's credit card debt began to rise. It took Debtor five years to obtain a salary commensurate with that of his previous employer, but Debtors continued to struggle with credit card debt.

One of the factors contributing to Debtors' rising debt is that Debtors live in Bieber, California, which is a rural community. Debtors contend that living in a rural community means that Debtors must pay higher prices for almost anything that is purchased in and around the area. Debtors note in their declarations (Dckt. Nos. 65 and 67) that the price of food in their area is 30% to 50% higher than the price of food in Redding, California. Debtors attempt to lower their living expenses by traveling out of their area for shopping. Debtors provide grocery shopping receipts for purchases made over the last few weeks.

Debtors also expand on how the cost of energy in the area affects their cost of living, and how Debtors frequently takes Debtor's wife's mother to Redding (a 196 miles round-trip) for medical treatment. Debtors maintain that they do not live an extravagant life style and rarely take vacations and dine out. After Debtors experienced a rise in credit card debt due to Debtor husband's 50% pay cut, Debtors retained a debt resolution firm; under the terms of their contract, they were to pay \$1,356 per month to the firm to pay down their debt. They "were forced to forego paying for their utilities," bought less clothes and food, and made cuts in other living expenses. Debtors then describe the condition of their residence, stating that it is in need of repair. Debtor wife is currently working on a year-by-year contract as a teacher's aide, and states that there is no assurance that she will be rehired for the next school year.

Debtor husband states that he is also paying \$307 a month for a student loan on behalf of his son as the only signer on the loan. Debtor husband contacted both services of the student loans; the servicer on the loan which requires payment of \$240.00 per month has refused to provide information as to how they will handle his bankruptcy situation, in which

Debtor would pay less on that loan if the loan was paid through the plan. The servicer of the \$67.00 per month loan has told him that as soon as the plan ends, they will garnish his wages for the total amount owed at that time.

Debtors have agreed to stop contributing \$200.00 per month to their daughter living in Redding, who is a full-time student at a nursing program at Shasta College. The support provided for Debtors is for tuition, book, and lab fees.

Although Debtors expound on the financial circumstances that led their bankruptcy filing, Debtors do not directly address any of the concerns raised in Trustee's Objection. Debtors did not address their delinquency in making Plan payments; inability to provide tax returns and pay advices to Trustee; deductions which do not comport with the appropriate IRS deductions for food, housing, utilities, transportation, healthcare, and telecommunications expenses; measures being taken to remedy the Plan's double payment of the student loans; the Plan's ability to survive the Chapter 7 Liquidation Analysis; and their recent car purchase.

Debtors have not addressed or attempted to cure any of the deficiencies of the Plan presented by Trustee in his Objection to Confirmation. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

24. [13-27437](#)-C-13 JOANN ARTIAGA MOTION TO CONFIRM PLAN  
CAH-3 C. Anthony Hughes 9-24-13 [[46](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed and Withdrawn

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 6, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Modify Plan.** No appearance at the November 19, 2013 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee originally filed an opposition, but withdrew the opposition because Debtor became current with all payments under the proposed Plan and resolved the delinquency issue. The opposition to the Motion having been withdrawn by the Chapter 13 Trustee, and with no opposition from other creditors, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. [13-31337](#)-C-13 ALEXANDER ZEAKOVI OBJECTION TO CONFIRMATION OF  
EAT-1 Pro Se PLAN BY ONEWEST BANK, FSB  
10-30-13 [[37](#)]

**Final Ruling:** The case having previously been dismissed on November 15, 2013, the Objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of Plan be overruled as moot.

26. [13-34037](#)-C-13 MESHA OWENS  
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY  
11-6-13 [[12](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on November 6, 2013. An Order Shortening Time for Hearing and Service on the Motion to Extend the Automatic Stay was entered by the court on November 7, 2013. The time for Notice of the Motion was shortened to thirteen days. In compliance with the order, Counsel served all parties of interest on November 6, 2013.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-22497) was filed on February 26, 2013 and dismissed on or about August 5, 2013. The case was dismissed for Debtor's failure to make Plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing. Debtor filed her current Chapter 13 case on October 31, 2013.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor did not file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that she was unable to make her Plan payments in her previous bankruptcy case because she was not getting sufficient hours at her job, and getting behind on paying her bills. She states that since her case was dismissed, her financial situation has changed and she has acquired a better job now that gives her enough stable income to permit her to manage her bills, and make Trustee payments. She states that she has not acquired any new debt since her previous case was dismissed, and has set forth a new Chapter 13 Plan that is confirmable and provide Plan payments for a vehicle, TV, and state and federal taxes.

Debtor states that the Plan provides that the holder of each allowed secured claim provided for by the plan either; (1) accepted the plan, (2) retains the lien and securing such claim and the value, as of the effective date of the plan, of property to be distributed is not less than the allowed amount of such claim, or (3) the debtor surrenders the property securing such claim to such holder.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor filed a Chapter 13 Plan on October 31, 2013. Debtor states that she will start remitting Plan payments of \$390.00 per month, on November 25, 2013, and that she will comply with the Plan. Debtor additionally assures the court that the currently proposed Plan meets the Chapter 7 liquidation analysis, and that it is likely to be confirmed.

The court will grant Debtor extension of the automatic stay beyond the 30 days provided under 11 U.S.C. § 362(c)(3)(A) for all purposes, unless terminated by further order of this court.

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

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

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



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

27. [13-28842](#)-C-13 JOHN/SHIRLEY MITCHELL MOTION TO CONFIRM PLAN  
DJC-1 Diana J. Cavanaugh 9-30-13 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 30, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 30, 2013 is confirmed, and counsel for

**November 19, 2013 at 2:00 p.m.**

**Page 49 of 112**

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

28. [13-27446](#)-C-13 ROBERT/GEORGETTE NOBLE MOTION FOR COMPENSATION BY THE  
CA-1 Michael David Croddy LAW OFFICE OF CRODDY AND  
ASSOCIATES, P.C. FOR MICHAEL  
DAVID CRODDY, DEBTORS'  
ATTORNEY(S), FEES: \$1,160.64,  
EXPENSES: \$0.00  
10-20-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2013. 14 days' notice is required. That requirement was met.

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

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

#### **FEES REQUESTED**

Michael Croddy ("Movant") as Counsel for Debtors, files this Motion for Compensation in this case for applies for \$1,160.64 in fees and \$0.00 in expenses. The period for which the fees are requested is from April 2013, to July 3, 2013.

## **Description of Services for Which Fees Are Requested**

Prior to the filing of this case, Movant received \$2,081.00 in attorneys' fees, and is now asking for additional fees. Movant attaches a detailed "Report of Time and Expenses" as Exhibit "C" to the instant motion, showing all work performed by counsel as a senior attorney at his firm. The statements cover all services to Debtors since Movant commenced rendering services after the first round of payment.

In his application and billing statements, Movant specifically details the services performed prior to the confirmation of Debtors' Plan, which included meetings with Debtors, document preparation and filing, attendance at the meeting of creditors, and the filing of the petition. Movant also describes the work performed in confirming the Chapter 13 Plan, and post-confirmation tasks. Debtors sign off the Motion as having "reviewed and consented" to the Motion for Compensation. Movant also states that Debtors were given a \$800 "Professional Discount" that was applied to the total amount owed.

## **DISCUSSION**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

- (ii) services that were not--
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

### **Benefit to the Estate**

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

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

*Id.* at 959.

A review of the application shows that Movant's services rendered a successful confirmation of Debtor's Chapter 13 Plan. The total fees sought by Movant is \$1,160.64, which is substantiated by clear billing statements provided by Movant on this application as Exhibit "C." The court finds the services were beneficial to the estate and reasonable.

### **FEES ALLOWED**

The hourly rates for the fees billed in this case are \$1,912.50/hour for Movant Counsel. The court finds that the hourly rates, and the request for a total of \$1,160.64 in additional fees that were not covered by Debtors' first round of payment to be reasonable. These fees are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	\$ 1,160.64
Costs and Expenses	\$ 0.00

For a total final allowance of \$1,160.64 in Attorneys' Fees and Costs in this case.

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

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

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

**IT IS ORDERED** that Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Eric J. Schwab, Counsel for the Trustee  
Applicant's Fees Allowed in the amount of \$ 1,160.64  
Applicants Expenses Allowed in the amount of \$ 0.00,

**IT IS FURTHER ORDERED** that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

29. [13-32247](#)-C-13 FLOYDETTE JAMES OBJECTION TO CONFIRMATION OF  
TSB-1 Eric W. Vandermeij PLAN BY DAVID CUSICK  
10-30-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to continue the Objection to December 10, 2013 at 2:00 pm.** No appearance at the November 19, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments of comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on a Motion to Value Collateral of Wells Fargo Bank, EWV-35, which is set for hearing on December 10, 2013. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

The court's decision is to continue the Objection to December 10, 2013, to be heard concurrently with Debtor's Motion to Value Collateral.

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

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

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

**IT IS ORDERED** that Objection to Confirmation the Plan is continued to December 10, 2013, so that this Objection can be heard in conjunction with Debtor's Motion to Value the Collateral of Wells Fargo Bank, EWV-35.



30. [13-32248](#)-C-13 RONALD/MARGARET PETERS OBJECTION TO CONFIRMATION OF  
TSB-1 Eric W. Vandermey PLAN BY DAVID CUSICK  
10-30-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's tentative decision is to continue the Objection to December 10, 2013 at 2:00 pm.** No appearance at the November 19, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments of comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relies on the Motion to Value Collateral of Bank of America, N.A., EWV-36, which is set for the hearing date of December 10, 2013. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

The court's decision is to continue the hearing on this Objection so that it can be heard in conjunction with Debtors' Motion to Value Collateral of Bank of America, at which time Trustee's basis for objecting to the Plan may be resolved.

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

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

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

**IT IS ORDERED** that Objection to Confirmation of Plan is continued to December 10, 2013, at 2:00 pm, so that the Objection may be heard concurrently with Debtors' Motion



to Value Collateral of Bank of America, N.A.  
(EWV-46).

31. [12-27250](#)-C-13 SHARRON HOWARD MOTION TO MODIFY PLAN  
RAC-1 Richard A. Chan 10-4-13 [[20](#)]

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, and Office of the United States Trustee on October 4, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted, Debtors' Chapter 13 Plan filed on October

**November 19, 2013 at 2:00 p.m.**

**Page 57 of 112**

4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [13-32350](#)-C-13 NICHOLAS KASSIMIS AMENDED MOTION TO VALUE  
HLG-1 Brunella M. Palomino COLLATERAL OF JPMORGAN CHASE  
BANK  
10-15-13 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 15, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1758 Hall Street, Marysville, California. The Debtor seeks to value the property at a fair market value of \$84,325.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$154,772.00. Creditor JP Morgan Chase Bank's second deed of trust secures a loan with a balance of approximately \$15,490.75. Therefore, the respondent creditor's claim secured by a junior deed of trust is

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

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank secured by a second deed of trust recorded against the real property commonly known as 1758 Hall Street, Marysville, California, 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 \$84,325.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

33. [13-33851](#)-C-13 DANNY RUE  
DWR-1 Pro Se

MOTION TO EXTEND AUTOMATIC STAY  
11-1-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on November 5, 2013. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. Debtor is filing in *pro se* and evinces a lack of knowledge in understanding what is required by the bankruptcy rules. Debtor filed his current Chapter 13 Bankruptcy case in October 28, 2013. Debtor indicates that he has filed two other bankruptcy cases in the last year. Debtor's last case (Case No. 13-24737-A-13J), was filed on April 5, 2013. Debtor's Motion to Extend the Automatic Stay filed in that case was denied because only 21 days' notice was given in his Notice of Hearing, where 28 days' notice was required.

The case which Debtor filed on February 1, 2013 (Case No. 13-21452-A-13) was dismissed. Debtor filed a Motion to Extend the Automatic Stay well after the expiration of the stay, and that Motion was denied because it was untimely filed. In that case, Trustee prevailed in her Counter Motion to Dismiss Case, on the bases that Debtor did not provide Trustee with certain documents that would allow Trustee to fully assess the feasibility of the Plan or effectively administer the plan, uncured deficiencies in Debtor's proposed Plans, and the lack of prosecution of the case by Debtor, who was maintaining two simultaneous bankruptcy cases at the time.

Pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor did not file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor appears to indicate that he mismanaged his previous bankruptcy cases, due to his ignorance of local bankruptcy rules and federal bankruptcy law. Debtor states that it has never been his intention to abuse the bankruptcy court or its laws, and that filing in good faith "has always been in the forefront." Debtor thus requests an extension of the automatic stay to allow Debtor to continue negotiating a loan modification agreement with his home lender to modify his home loan.

Debtor admits to mismanaging his previous bankruptcy cases, due to his ignorance of local bankruptcy rules and federal bankruptcy law. Debtor states that it has never been his intention to abuse the bankruptcy court or its laws, and that filing in good faith "has always been in the forefront." Debtor thus requests an extension of the automatic stay to allow Debtor to continue the "documentation process" in negotiating a loan modification agreement with his home lender to modify his home loan.

Debtor states that the mortgage lender has reset a Trustee sale date of his property for December 2, 2013, but is also communicating with the lender to modify his loan. Currently, Debtor has an adjustable rate mortgage at 8.95%. With a loan modification in place, Debtor is aiming to receive a fixed rate mortgage between 4% to 5%, which will allow him to set forth a confirmable Chapter 13 Plan.

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 court notes, however, that although it is satisfied that Debtor has not filed his multiple bankruptcies in bad faith, but rather is confused by what he perceives to be a morass of local bankruptcy

procedural rules and federal bankruptcy law, it would be well advised of Debtor to seek counsel in managing his bankruptcy proceedings. Debtor has filed multiple Chapter 13 Plans are not suitable for confirmation because of issues that Debtor seems to choose to ignore or are too incomprehensible for Debtor to address, providing a basis for Trustee's requests for dismissals of Debtor's previous cases.

For now, the court will grant Debtor extension of the automatic stay beyond the 30 days provided under 11 U.S.C. § 362(c)(3)(A) for all purposes, unless terminated by further order of this court. Based on the totality of the circumstances, Debtor has not filed further cases in bad faith, but rather is forced to file more bankruptcy cases after leaving problems identified in Debtor's previous Chapter 13 Plans unresolved.

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

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

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

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

34. [13-30454](#)-C-13 LEROY THOMAS MOTION TO MODIFY PLAN  
PGM-1 Sunita N. Sood 10-30-13 [[39](#)]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 20 days' notice was provided. 42 days' notice is required. That requirement was not met.

**Final Ruling:** The Motion to Confirm the Plan was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Motion to Confirm the Plan is denied.** No appearance required.

The motion was not properly set for hearing. Local Bankruptcy Rule 3015-1(d)(1) requires that notice be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). By the court's calculation, only 20 days' notice has been provided in this case. The motion is also mislabeled with the docket control number of PGM, instead of counsel's initials: SNS.

Moreover, as Trustee points out, Debtor has not yet been examined by the Trustee. Debtor and Debtor's Counsel did not appear at the First Meeting of Creditors, held on September 5, 2013. The hearing was continued to October 31, 2013. A telephonic appearance was approved by UST as Debtor had moved to Hawaii for work. On October 31, 2013, Debtor was available by phone in Hawaii, but Debtor's Counsel did not appear. The meeting has again been continued to December 5, 2013, at 10:30 am. At this time, Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

Thus, the motion is denied and the Chapter 13 Plan is not confirmed.

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

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

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

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

35. [13-32858](#)-C-13 HARRY/GWEN HIGASHINO MOTION TO VALUE COLLATERAL OF  
ULC-1 Julie B. Gustavson FIRST HORIZON HOME LOANS  
10-15-13 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 26, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor, Kimberly Johnston, is the owner of the subject real property commonly known as 3160 Cedar Ravine, Placerville, California. The Debtor seeks to value the property at a fair market value of \$276,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan from Bank of America Home Loans, with a balance of approximately \$346,106.00. Creditor Green Tree Servicing, Inc.'s second deed of trust secures a loan with a balance of approximately \$38,862.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.



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

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

The Motion for Valuation of Collateral filed by Debtor 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 Green Tree Servicing, Inc. secured by a second deed of trust recorded against the real property commonly known as 3160 Cedar Ravine, Placerville, 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 \$276,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

36. [13-27563](#)-C-13 AMANDA STONE  
SJS-1 Scott J. Sagaria

MOTION TO CONFIRM PLAN  
10-7-13 [[37](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan was not properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Local Bankruptcy Rule 3015-1(d)(1) requires that notice be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on 42 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). Debtor's notice advises potential respondents that the motion is filed under Local Bankruptcy Rule 9014-1(f)(1)(ii), but that written opposition to the motion must be filed and served with the Court at least fourteen (14) calendar days preceding the date or continued date of the hearing, and that "failure to timely file written opposition to the motion may result in the motion being resolved without oral argument..."

In light of Debtor providing at least 42 days' notice (43 days in this case) for parties in interest to respond, the court will entertain this motion as a motion filed pursuant to Local Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 7, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

37. [13-29470](#)-C-13 VASUDEVA BENARD  
PGM-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
9-30-13 [[43](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2013. 42 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of Debtors' plan on the grounds outlined below:

(1.) Trustee asserts that Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income, as shown on Debtor's Form 22, proposing a 60 month plan paying a total of \$900 through September, 2013 and \$1,045 per month for the remaining 58 months, proposing to pay no less than 0% to general unsecured claims. The original Plan proposed \$1,900.00 for 60 months with no less than 0% to unsecured claims.

Trustee had objected to the original Plan, and creditor RAC Acceptance West had opposed the motion to value filed with the plan. Prior to the hearings on these matters, Debtor inexplicably presented an Amended Plan, along with a supporting declaration which states:

I no longer need assistance from my friend. I have found a job and I am able to make all payments under the plan. The primary source of income for my household is from employment with Abort New Auto Sales and I anticipate this income source for the remainder of the plan.

Trustee states that it appears that Debtor is not reporting all household income, as Debtor's current and original Schedule I shows Debtor's household as having one son, one step-son, one step-daughter, and a significant other. The original Schedule I listed a \$1,000 per month in contribution from the significant other. On the amended Schedules I filed

in support of this motion, Debtor removed the contribution from the significant other, but still listed the same dependents.

(2.) Debtor has not proven his ability to make the Plan payments under 11 U.S.C. § 1325(a)(6). Debtor has declared that he has found a job, and can make all payments under the plan, which implies that he has found a new source of income. Based on Debtor's Amended Schedule I, Debtor has obtained new employment; although Debtor's original Schedule I showed employment with the same employer, there was no indication of how long Debtors was employed, but \$2,000.00 per month of estimated overtime reported. Amended Schedule I reflects the same overtime, with no indication of how long Debtor has been employed.

Debtor did not make all of the payments due under the original plan, paying \$300 on August 27, 2013 and \$500.00 on October 3, 2013. Without more evidence, the court cannot find that Debtor can pay the reduced amount of \$900.00 per month.

(3.) The Plan calls for adequate protection payments of \$640.00 a month to OneWest Bank , but also calls for \$35.00 per month to OneWest Bank for one post-petition payment. If the \$640.00 represents adequate protection, the \$35.00 would not appear necessary; if \$675.00 per month is required for adequate protection, \$6.03 should provide for \$675.00.

(4.) The treatment of two creditors, RAC Acceptance and Aarons Sale and Lease, may not comply with applicable law under 11 U.S.C. § 1325(a)(1). RAC Acceptance successfully opposed Debtor's prior motion to value, and Aarons has filed a claim asserting that they have an executory contract on which \$2,565.36 owed. Both creditors may have leases which are not assumed in the plan, but are placed in different classes where one is valued and the othre is not. Trustee is not certain whether the treatment is appropriate, unless Debtor moves separately to determine the secured status of the claims under 11 U.S.C. § 506.

### **Debtor's Reply**

Debtor responds to Trustee's objections by acknowledging the concerns, and requests from the court additional time to supplement the record to address concerns with the Plan.

The court will grant Debtor's request and continue the hearing on the Motion to Confirm, so that Debtor may be given additional time to provide supplemental documents addressing Trustee's issues with the Amended Plan.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

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

**IT IS ORDERED** that Motion to Confirm the Plan is continued to [date] at [time] so that Debtor may supplement the record to address Trustee's objections to confirmation of the Plan.

38. [13-33572](#)-C-13 CAROL CROUCH MOTION TO IMPOSE AUTOMATIC STAY  
PGM-1 Peter G. Macaluso 10-29-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on October 21, 2013. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks an order from the court causing the automatic stay to take effect in Debtor's case as to all creditors, pursuant to 11 U.S.C. § 361(c)(4)(B). Debtor filed her previous Chapter 13 case, Case No. 11-28425 on April 4, 2011, which was dismissed on or about November 29, 2012. The court dismissed the case for Debtor not curing a default, filing a written objection and to request a hearing to modify her Plan, performing the terms of her proposed modified Plan pending its approval, or obtaining approval of the Plan within the time constraints allowed.

Debtor filed a second Chapter 13 Case, Case No. 12-39816, on November 9, 2012, which was dismissed on or about October 3, 2013. The

court dismissed this case after granting Trustee's Motion to Dismiss case, after Debtor did not file an amended plan and set it for confirmation, after Debtor's previously proposed plan had been denied three months earlier.

The current Chapter 13 case was filed on October 21, 2013.

11 U.S.C. § 362(c)(4)(A) provides that the automatic stay will not take effect in a case filed under Title 11 if the Debtor had two (2) or more cases pending within the previous year that were dismissed. If, within 30 days of filing the most recent case, a party in interests requests the court to have the stay take effect as to all creditors, the court may enter such an order following a notice and hearing and demonstration by the party in interest that the most recent filing was in good faith. 11 U.S.C. § 362(c)(4)(B). A case is presumptively filed not in good faith as to all creditors if two (2) or more previous cases of the debtor were pending within the one-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

Here, Debtor argues under § 362(c)(4)(B), the dismissal of the previous case raises the presumption of bad faith filing for the instant case. However, Debtor only had one (1) case pending in the year prior to the filing of Debtor's most recent case. Debtor's current case was filed on October 21, 2013 and in the year from October 21, 2012 through October 21, 2013, only one case of Debtor was pending, Case No. 12-39816. Therefore, 11 U.S.C. § 362(c)(4)(A) does not apply to limit the automatic stay taking effect.

However, under 11 U.S.C. § 362(c)(3), if a debtor files a bankruptcy case within one year after a previous case was pending and dismissed, then the automatic stay in that case will terminate 30 days after the filing. Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor's previous case was dismissed because Debtor did not perform the terms of a plan confirmed by the court. 11 U.S.C. § 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).

It appears the Debtor should have moved to extend the stay under § 362(c)(3)(B), rather than move to impose it, as Debtor had one case pending and dismissed within the year preceding the current case filed on October 21, 2013. Furthermore, because the prior case was dismissed for not filing an amended plan, the presumption of bad faith arises under § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence of good faith. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant bankruptcy case was filed in good faith. Debtor purports to have filed this case to cure the pre-petition arrears owed on her primary residence. Debtor's Schedule I and B22C reflect that she is earning enough wages and money to cover all her necessary obligation in addition to the proposed Chapter 13 Plan. Debtor claims that her approximately \$3,652.90 in expenses is reasonable and necessary, and that she is able to fund the current plan and make the monthly plan payments of \$2,600.00, and ultimately obtain a discharge.

### **Creditor's Opposition**

Creditor, Cam Mortgage Trust, filed an opposition to Debtor's Motion to Impose the Automatic Stay on November 15, 2013. Creditor is the current beneficiary under a First Deed obligation, executed by Debtor, and secured by the real property located at 2009 Maryvale Way, Rancho Cordova, California. The primary basis for Creditor's opposition is that in Debtor's second bankruptcy case, Case No. 12-39816, which was filed on November 9, 2012, Debtor's Motion to Extend the Automatic Stay was specifically granted by the court upon Debtor's promises that she would surrender her home of 32 years to make it possible for her to maintain her Plan payments.

Debtor proposed a plan on November 9, 2012, which proposed to surrender the property to the Creditor. The prior holder of the note, Citi Mortgage, was listed as a Class 3 Creditor for the property to be surrendered. The Plan provided for relief from stay upon confirmation of the Chapter 13 Plan. The Plan, however, was not confirmed. In response to Trustee's Motion to Dismiss that was filed, Debtor filed an Amended Plan on March 6, 2013. This plan provided for the same treatment of the lender, but the Plan was again not confirmed.

Given the lack of payment by Debtor, the lack of equity in the property, and the property to surrender the property in the Plan, Creditor filed a motion for relief from stay to foreclose the property, which was granted on April 16, 2013. On June 18, 2013, after Debtor had made multiple representations that the property would be surrendered and after the relief from stay had been obtained, Debtor filed a Second Amended Plan on June 18, 2013, and sought to undo the prior order for relief by listing Creditor's claim and attempting to subject Creditor to a new stay. It listed Creditor as a Class 1 Creditor and proposed a \$1300 monthly payment (less than the monthly payment amount).

Creditor opposed the Plan on the basis that Debtor's loan modification had been denied, that it had already obtained a relief from stay, and that Debtor's first bankruptcy case was dismissed to lack of payment and lack of income sufficient to fund a plan. Now, Debtor has filed the current bankruptcy again to stop the pending foreclosure sale. Debtor claims that she receives monthly income from "retirement funds" and "Social Security income" for a monthly total income of \$4,630.65. In her Schedule I, she provides for monthly income of \$6,252.90 to show that she has additional disposable income, but does not provide explanation of this.



Creditor claims that Debtor is trying to represent that she is making an additional \$2,052 from a part time job, but provides no explanation of this. The portion for rent and home mortgage payments is also left blank in her Schedule J expenses.

Creditor claims that Debtor is distorting her income and expenses to show that she has sufficient disposable income to confirm a Plan. Creditor also states that Debtor has not demonstrated any changed circumstances or sufficient income to fund and complete plan.

### **Court's Findings**

The court finds that Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case. Debtor's bankruptcy filing does not seem to satisfy the inquiry of determining good faith in filing, as set out by *Elliot-Cook*, 357 B.R. at 814-815. In her declaration in support of this Motion (Dckt. No. 20), Debtor does not state with specificity how her financial situation has changed, other than the fact that she has "gotten literature on gambling addiction" and has attended meetings, and her car was repossessed and towed away. Based on Debtors' schedules, it does not appear that Debtor's income has increased, or that she is now suddenly able to cure her default on her home loan and make ongoing plan payments to Creditor. The proposed plan is not likely to be confirmed.

Moreover, Debtor's most recent plans can be construed as dubious attempts to circumvent the previous relief order obtained by Creditor to pursue non-bankruptcy remedies against the property commonly known as 2009 Maryvale Way, Rancho Cordova, California. Creditor prevailed on a Motion for Relief from Stay on April 16, 2013, which vacated the stay with respect to Creditor, so that Creditor could foreclose on the subject property. Debtor's amended plan in the second bankruptcy case, however, conspicuously lists Creditor as a Class 1 creditor, even though Creditor had obtained a relief order and Debtor had articulated her intention to surrender the property.

Debtor again includes Creditor in the Plan as a Class 1 Creditor, with no demonstration that Debtor can maintain and cure the this defaulted secured claim. Thus, the court is not certain that Debtor filed the instant bankruptcy case in good faith, and will not grant Debtor's Motion to Extend the Stay.

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 to  
Impose the Automatic Stay is denied.



39. [13-31374](#)-C-13 CHARLENE OJASCASTRO  
KMR-1 Richard L. Jare  
**Thru #40**

OBJECTION TO CONFIRMATION OF  
PLAN BY FIRST MORTGAGE  
CORPORATION  
10-22-13 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 22, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, First Mortgage Corporation, opposes confirmation of Debtor's plan on the basis that the arrears listed as being owed to the Creditor on the Plan are in the amount of \$40,000, while the actual arrears owed on Debtor's Promissory Note up until the date of filing, August 29, 2013, is \$54,894.21. Creditor sets forth this amount in its Proof of Claim, #3-1, but does not attach supporting paperwork to this Objection or its Proof of Claim to show that Debtor was actually delinquent \$54,894.21 in pre-petition payments.

If Creditor is presenting the correct arrearage amount, Debtor must pay a minimum payment of \$1,016.56 per month through the Plan. Creditor accurately states that Debtor's Plan provides for payments to the Trustee in the amount of \$250.00 per month for one month, then \$3,220.00 per month for 13 months, then \$4,120.00 per month for 40 months. It is unclear whether Debtor can make the necessary payments to cover the excess amount of Creditors' claim under the Plan or comply with the Plan under 11 U.S.C. § 1325(a) (6).

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b) (2), (b) (5) & 1325(a) (5) (B). Because the Plan does not currently

provide for the full amount of Creditor's arrearage, the court's decision is to sustain the Objection and deny confirmation of the Plan.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 24, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtor appears to be over the median income and proposes plan payments of \$250.00 for one month, \$3,220.00 for 13 months, and \$4,120.00 for 40 months, for a total of 54 months. Debtor proposes a 0% dividend to the unsecured creditors. Debtor's income is not clear, as Schedule I lists her gross income as \$1,000.00. Debtor admitted at the First Meeting of Creditors that her aunt moved in a couple of weeks ago and Debtor will be working full time beginning in December, 2013. Debtor stated that she estimates her gross income will be \$2,800.00 per month at that time.
2. The additional provisions of Debtor's Plan are not clear. §6.02 of the Plan is not clear, because Debtor does not clearly state their intentions regarding the pre or post petition treatment of First Mortgage Corporations claim. Furthermore, the language of §6.03 should be stricken because Debtor did not file a stand alone motion .
3. Debtor has not provided Trustee with Employer Payment Advices received 60 days prior to filing, which are necessary under 521(a)(1)(B)(iv).

4. Debtor cannot make payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor lists her spouse's regular gross income as \$5,720.00 and \$379.17 as estimated monthly overtime. Trustee received 521 documents on or around October 1, 2013 via email from Debtor's counsel. The paystub dated August 14, 2013, does not list overtime pay for Richard Ojascastro. It does not appear that Richard Ojascastro works or is paid overtime.

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

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

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

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

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

41. [13-32374](#)-C-13 JOSE ACOSTA GOMEZ AND ANA OBJECTION TO CONFIRMATION OF  
TSB-1 ACOSTA PLAN BY DAVID CUSICK  
Mary Ellen Terranella 10-30-13 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 30, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' Plan does not meet the Chapter 7 Liquidation Analysis provided for under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$15,103.00 and Debtors are proposing to pay a 12% dividend to unsecured creditors, paying approximately \$13,883.00 to unsecured claims. Trustee also noticed, upon reviewing Debtors' 2012 Tax Return, that Debtors reported income from dividends in 2012.

At the Meeting of Creditors, Debtors testified to owning 500 shares of stock which was estimated at \$50 a share. Debtors have not reported this asset on Schedule B. As a result, it appears that Debtors have an additional \$25,000 in non exempt assets, which would add to Debtors' nonexempt assets amount for a total of \$40,103.00

2. On Form B22C, on Debtors' Statement of Current Monthly Income, Line 3b, Debtors list ordinary and necessary business expenses of \$4,000.00. Debtors' list ordinary and necessary business expenses of \$350.00. Debtors are then over median income, and have not conformed to 11 U.S.C. § 1325(b)(1)(B) in completing the CMI. See also *Drummond v. Wiegand (In re Wiegand)*, 2008 Bankr. LEXIS 1256 (B.A.P. 9th Cir., April. 3, 2008). Business expenses should also be deducted below Line #23..

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

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

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

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

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



**Thru #43**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 7, 2013. 42 days' notice is required. That requirement was met.

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

**The court's tentative decision is to deny the Motion to Confirm the Plan.**

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee and Creditor Bank of New York Mellon have both filed oppositions to Debtors' Motion to Confirm.

**Creditor's Objection**

Creditor Bank of New York Mellon, fka the Bank of New York as Trustee for the Certificate Holders of the CWABS, Inc. Asset-Backed Certificates, Series 2005-11 objected to the confirmation of the proposed Plan on the basis that the Plan does not list any pre-petition arrearage owed to Creditor.

Creditor asserts that the total arrears on the note that was entered between Debtors and Creditor, secured by 127 Rutherford Drive, Vacaville, California, are \$13,557.38. In order to cure the pre-petition arrears owed to Creditor over 60 months, Debtors must pay \$225.96 per month towards these arrears. Based upon these figures, Creditor asserts that the Plan is not feasible, as it will not satisfy the obligations due to it by Debtor.

**Trustee's Objection**

The Trustee objects to confirmation of Debtors' Plan on the basis cannot afford to make the payments of comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of HSBC, which is set for hearing on this date.

The court's decision on Debtors Motion to Value Collateral of HSBC, also set for hearing on this date, will be granted, rendering Trustee's singular objection moot.

## Debtor's Reply

On August 31, 2013, Debtors received a letter from Creditor Bank of New York Mellon, informing them that they had been approved to enter into a "Trial Period Plan" under the federal government's Home Affordable Modification Program. According to the terms of the Modification, in order to accept the offer, Debtors must make payments in the exact amount in lieu of Debtors' monthly mortgage payment. Further, if Debtors make all of the monthly trial period payments, they may receive a modification agreement that when signed and returned will cause the modification to become officially permanent.

As a result, Debtor placed Creditor in Class 4 of the Amended Plan because it provides Creditor with monthly adequate protection payments, pending determination of the modification. Additionally, it allows Creditor to exercise its rights against the collateral and seek termination of the stay if the loan modification is not approved, or if Debtors are not proceeding in good faith.

The court finds Debtors' arguments regarding the placement of Creditor in Class 4 improper, because the trial loan modification does not cure the arrearage. There must be no defaults for a claim to be included within Class 4. As drafted, the Plan violates 11 U.S.C. § 1322(b)(2) and inaccurately states the claim and payments required thereunder. If the Debtors want to provide for adequate protection payments to be made to the creditor, then such treatment is specified in the Additional Provisions portion of a Chapter 13 Plan.

This mistreatment of the claim, and purported no arrearage causes the Debtor to not address the issue of the conflicting amount of arrears (13,557.38) set forth by Creditor. It appears that this amount is not provided for payments currently called for by the Plan. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.

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, respondent creditor, and Office of the United States Trustee on October 15, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the declaration of Daniel Reid, a licensed real estate appraiser hired by Debtors. Debtors James and Lori Perry are the owners of the subject real property commonly known as 127 Rutherford Drive, Vacaville, California. Debtors seek to value the property at a fair market value of \$258,500.00 as of the petition filing date. Debtors have adopted the opinion of their real estate appraiser, who states that the appraised amount of \$258,500.00 was derived from an analysis of comparable sales, market trends, and pertinent economic factors, as well as compliance issues. As the owner, the 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 first deed of trust secures a loan from Bank of America, N.A., with a balance of approximately \$401,236.18. Creditor Beneficial's (serviced by HSBC Mortgage Services, Inc.) in the amount of second deed of trust secures a loan with a balance of approximately \$50,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by 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 Beneficial (serviced by HSBC Mortgage Services, Inc.), secured by a second deed of trust recorded against the real property commonly known as 127 Rutherford Drive, Vacaville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$258,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors (*pro se*) on October 15, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor is \$2,793.00 delinquent in plan payments to Trustee to date and the next scheduled payment of \$2,793.00 is due on October 25, 2013. Section 1.01 of Debtors' Plan calls for payments to be received by Trustee no later than the 25<sup>th</sup> day of each month, beginning on the month after the order for relief has been entered.
2. The Plan does not represent Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$2,793.00 for 60 months with a 0% dividend to unsecured creditors. Debtors' Form B22C indicates a monthly disposable income of \$7,970.00 for 60 months. The unsecured creditors would be entitled to \$478,300.00; however, Debtors are paying \$0.00 to unsecured creditors. Debtors list a household size of 6 on Form B22C, but Schedule I does not list any dependents. Debtors' monthly net income on Schedule J reflects \$3,743.00, and Debtors are proposing a plan payment of \$2,793.00.
3. Debtors' Plan may not comply with applicable provisions of the Bankruptcy Code, 11 U.S.C. § 1325(a)(1). Debtors' Plan lists Wells Fargo Financial in Class 1 of the Plan, but does not list a 0% interest rate to the mortgage arrears. If the interest is left blank, interest will accrue at the rate of 10%; however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e),

unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

4. Debtor lists Wells Fargo and Feather River Hospital to be paid in Class 4. However, Debtor did not list these debts on Schedule D and Trustee is uncertain if these debts are properly classified in the Plan.
5. Debtors' Plan does not meet the Chapter 7 Liquidation Analysis provided for under 11 U.S.C. § 1325(a)(4). Debtors have not exempted all the assets listed on Schedule B, which total \$14,580.00, and Debtors are proposing a 0% dividend to unsecured creditors.
6. Debtors cannot make payments required under 11 U.S.C. § 1325(a)(5). Debtors list income of \$2,570.00 from adoption assistance on Schedule I, but has not listed any dependents on Schedule I. Debtors list the mortgage payment to Wells Fargo in Class I, in the amount of \$1,048.72, but also list a mortgage payment of \$1,700.00 on Schedule J.

#### **Debtors' Second Amended Plan and Amended Schedules E and I**

The court docket reflects that Debtors filed a Second Amended Plan on October 22, 2013 (Dckt. No. 24), and a First Amended Schedule E and First Amended Schedule I on that same date (Dckt. No. 26). Although some of Trustee's concerns were resolved with the Second Amended Plan and Amended Schedules E and I (for instance, Debtors list the dependents in their household in their updated Schedule I), it appears that there are still issues raised by the Trustee that have not been corrected with the new Plan.

Debtors have not amended their Schedule D to list debt incurred with Wells Fargo. The Plan still proposes to pay \$0.00 to unsecured creditors, even though Debtors amended their Schedule I to reflect a higher combined average monthly income of \$8,861.00, increased from the previous amount of \$7,979.00. (Dckt. No. 26, Schedule I, Line #16). Debtors still have not exempted all assets listed on their Schedule B.

Because Debtors have not remedied all the issues that Trustee raised with respect to Debtor's original Plan in their Second Amended Plan, the court has determined that the Second Amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

45. [13-31583](#)-C-13 WILFREDO/FE ONA  
SDB-1 W. Scott de Bie

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
10-17-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 17, 2013. 28 days' notice is required. That requirement was met.

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

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

A judgment was entered against Debtor Fe T. Ona in favor of Capital One Bank (USA), N.A. in the amount of \$9,347.33. The abstract of judgment was recorded with Solano County on December 16, 2010. That lien attached to the Debtor's residential real property commonly known as 646 Verona Court, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$350,000.00 as of the date of the petition. The unavoidable consensual liens total \$692,224.93 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of \$100.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented



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

**IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., Solano County Superior Court Case No. FCM110591, Document No. 201000118995, recorded on December 16, 2010, with the Solano County Recorder, against the real property commonly known as 646 Verona Court, Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g)., if there is opposition, the court may reconsider this tentative ruling.

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

The hearing on this Objection was continued from October 22, 2013, to this hearing per Trustee's request to allow Debtor to address the objection after the continued meeting of creditors on November 14, 2013. Since Debtor Richard Hill was out of town on business until November, Trustee intended to examine Debtor at the continued meeting to resolve the issues raised in the Objection. Trustee has not filed anything further, however, regarding this matter. The court presumes that Trustee's opposition still stands.

The Chapter 13 Trustee opposed confirmation of the Plan for the following reasons:

(1.) Debtors did not appear at the First Meeting of Creditors held on September 12, 2013. Trustee does not have sufficient information to determine whether or not the Plan is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to November 14, 2013.

The Trustee's Report of the continued First Meeting of Creditors, November 18, 2013 Docket Entry, states that the Debtor, Richard Hill, did not appear at the continued First Meeting of Creditors, and that only counsel and co-debtor Christina Hill appeared.

(2.) Under 11 U.S.C. § 1325(b), it does not appear that the Plan represents Debtors' best efforts. Debtor is under the median income and proposes plan payments of \$361.00 for 60 months, with a 0% dividend to unsecured creditors.

Debtors list an expense of \$142.00 on Schedule J for a furniture lease, but did not indicate the terms of the lease and if it completes

earlier than the 60 month Plan. Debtor has listed on Schedule B that their miscellaneous household goods are worth \$2,500 (Dckt. #1, Page 13, Item 4). As a result, Trustee asserts that paying \$8,5200.00 for the household goods (\$142.00 for 60 months) is not reasonable.

Debtors indicate on Line #17 on Schedule I that "Husband's SDI Benefits are Pending," but does not indicate the amount of SDI and when Debtor husband will start receiving this amount. Debtor does not propose an increase in plan payments when the SDI is received.

(3.) The treatment of priority tax debt is unclear. Debtors list the Internal Revenue Service on Schedule E, indicating that the total amount of IRS priority debt is \$12,959.25, and the amount not entitled to priority is \$0.00. Debtors also list the Franchise Tax Board on Schedule E in the amount of \$537.98 as priority debt, and the amount not entitled to priority is \$0.00. The Plan only provides for one claim as priority--the IRS in Class 5 at \$5,124.74. The Additional Provisions propose to pay the IRS at \$86.00 per month, and explain that both claims are only entitled to general unsecured treatment except for the one priority portion.

The Internal Revenue Service has filed an amended Claim (Claim #1, filed on August 23, 2013), asserting a priority amount of \$4,990.18, and general unsecured amount of \$7,738.48. Trustee concedes that treatment of those claims in the Plan is probably correct, but raises this issue out of an abundance of caution.

(4.) The Plan may be causing unfair discrimination to the unsecured creditors, pursuant to 11 U.S.C. § 1322(b)(1). See *In re Sperna*, 173 B.R. 654 (9<sup>th</sup> Cir. BAP 1994). Debtor husband lists his 2010 Honda Civic in Class 2 of the Plan, but Debtors do not propose to value this automobile. The debt was incurred in 2010 based on the attachment to the Proof of Claim filed by 1-800 Loan Mart on July 25, 2013, Court Claim #2. Debtors have not filed a motion to value to date.

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

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the Plan is not confirmed.

47. [13-31284](#)-C-13 PATTI BEGRIN  
TSB-1 Harry D. Roth

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
10-24-13 [[25](#)]

Final Ruling: The case having previously been dismissed on October 14, 2013, the Objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of Plan be overruled as moot.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 2013. 44 days' notice is required. That requirement was met.

The court notes that Debtor's original Notice of Hearing for this Objection incorrectly stated in the body of the Notice that the Objection would be heard on January 19, 2013 at 2:00 p. m. The caption on the Notice reflected the correct time. Debtor recognized its mistake and filed an Amended Notice of Hearing, stating the correct hearing date and time, on November 5, 2013. Because of the error in notice, the court will proceed with this Objection as it was set for hearing on the notice required by required by Local Bankruptcy Rule 9014-1(f)(2).

**Tentative Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3), and 9014-1(f)(2). Consequently, the respondent creditor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection to Proof of Claim number 5-1 of Asset Acceptance, LLC and disallow the claim in its entirety.**

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

The Proof of Claim at issue, listed as Claim Number 5-1 on the court's official claims registry, asserts \$3,109.63 claim. The Debtor objects to the Proof of Claim on the basis that Creditor's ability to collect on the claim is barred by the statute of limitations, as the time permitted to collect on the claim has passed.

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).

Cal. Civ. Proc. Code § 337 states that an action to recover any damages arising from contract, obligations, or liability founded upon instruments in writing must be brought within four years of date upon which the facts that entitle the aggrieved party to relief occurred. For contract claims, the statute runs from the date the balance was due under the contract, or four years from the date the last payment was made under the contract. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). Here, Creditor indicates that the last payment on Debtor's loan was made on July 4, 2008. Creditor filed its Proof of Claim on April 3, 2013, time-barring its action to enforce the claim.

By not responding to the objection, the creditor has not met its burden to prove the validity of its claim. Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of filed in this case by Asset Acceptance, LLC 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 5-1 of Asset Acceptance, LLC is sustained and the claim is disallowed in its entirety.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Trustee has filed an opposition to the Amended Plan. The Chapter 13 Trustee objects to the plan on the following grounds:

(1.) According to Trustee's calculations, the Plan will complete in 109 months as opposed to the 60 months proposed. This exceeds the maximum amount of time permitted under 11 U.S.C. § 1322(d).

Debtor's plan proposes the following plan payments: \$5,950.00 for 3 months, \$6,425.00 for 3 months, \$6,108.00 for 53 months, with a 0% dividend to unsecured creditors. The Plan payments total \$360,849.00, but Debtor is proposing to pay \$490,784.17 in debt through the Plan.

(2.) The Additional Provisions state that "60th month-plan payment shall equal the balance of all filed claims and administrative fees owed. Approximate balance of 60th month plan payment is estimated to be \$155,500.00." Debtor does not identify the projected source of the lump sum payment.

#### **Debtors' Reply**

Debtors state that their 60th month payment will come from either a refinance of their residence or a sale of their residence. Debtors argue that during the first 59 months of the Plan, all secured and priority creditors receive payments that they are not likely to receive if the Plan is not approved. Debtors acknowledge that whether or not Debtor will be able to refinance or will need to sell their home is speculative, but that a

possible refinancing or sale is just as contingent as "every debtor's continuation of employment" in other Chapter 13 bankruptcies.

The court finds mere prospect of a refinancing or sale of Debtors' property to cover the vast remaining costs that will still be owed in the 60<sup>th</sup> month of the Amended Plan to be too uncertain. Debtors have not supported their intention to sell or refinance their home with any proposed numbers, including the anticipated reduction in interest rates on Debtors' mortgage that will result from the refinancing, or an anticipated financial benefit from the sale. Moreover, Debtors do not explicitly state their intention to refinance or sell their residence in their Plan and have left the court and Trustee guessing as to how the balance of \$155,500.00 was going to be paid.

Thus, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and will not be confirmed.

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

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

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

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



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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on October 4, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtors' Plan is not their best effort under 11 U.S.C. § 1325(b) because they are over median income and propose plan payments of \$519.00 per month for 60 months, with a 12% dividend to the unsecured creditors.

(2.) Schedule I lists Debtor husband's gross income as \$7,833.54 per month. Trustee believes this figure is closer to \$8,775.82 per month. Debtor's pay statement reflects that Debtor has received through September 7, 2013 a total of \$104,471.01, or approximately \$8,775.82 per month for a difference of \$942.48 per month.

Additionally, Debtors received a \$5,751.00 in a federal tax refund; of that amount, \$1,250.00 was from the Child Tax Credit. If Debtors included this income in their monthly income calculation, they would have at least \$479.25 per month in additional income. Continued tax refunds appear likely and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense. No future tax refund income is projected on Schedule I.

(3.) Debtor husband's pay statement lists \$31,989.70 as his YTD Expense Reimbursement. Schedule J lists unreimbursed employee business expenses in the amount of \$550.00 per month. It is unclear why Debtor incurs approximately \$550.00 per month in additional unreimbursed business

expenses, where his employer appears to have reimbursed Debtor at a rate of approximately \$3,877.35 per month.

### **Debtors' Response**

Debtors filed this response on November 4, 2011 (Dckt. No. 32). Debtors are in agreement with Trustee on multiple points and have changed their Schedules accordingly. Debtors agree with Trustee on his concerns regarding the reporting of their income, and will change their income on their Schedule I to the figure Trustee requests it to be (\$8,775.82). Debtors have filed an Amended Schedule I.

Debtors agree with the Trustee that their tax refund is additional income, and should be paid through the Plan. Debtors agree that every year, they will surrender any tax refund to the Chapter 13 Trustee that is over \$1,500. Debtors agree that the \$550 per month figure for unreimbursed employee business expenses is incorrect. Debtor has filed an Amended Schedule J to reflect this \$45.83 expense.

Debtors would like to increase their food budget from \$680.00 to \$1,500; when the petition was filed, Debtors attempted to cut back on their future food expenses. Debtors report that it has been impossible, however, to reduce their food budget by that amount. Debtors would also like to increase their transportation expenses from \$250 to \$400 in order to cover the cost of vehicle care and maintenance, which was not included in the budget.

### **Trustee's Reply to Debtors' Response and Declarations**

Trustee states that he is not necessarily in disagreement with Debtors' Amended Schedules I and J, but Debtors did increase their food expenses by more than 100%. Debtors did not address how they came up with the \$1,500.00 total food expenses in their food expenses. Additionally, Debtors agree that they will surrender any tax refund to the Chapter 13 Trustee that is over \$1,500.00, but have not explained why they need to retain \$1,500.00 each year.

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 Creditor Capitol One Auto Finance 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.

51. [13-29091](#)-C-13 KELCY BROWN  
PCP-1 Peter C. Pappas  
**Thru #52**

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL  
10-22-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 18, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor, Kelcy Renee Brown, is the owner of the subject real property commonly known as 840 Taper Court, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$213,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$302,000.00. Creditor Springleaf Mortgage's second deed of trust secures a loan with a balance of approximately \$20,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor 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 Springleaf Mortgage secured by a second deed of trust recorded against the real property commonly known as 840 Taper Court, Vallejo, California, 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 \$213,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2013. 35 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion to Modify Plan.** No appearance at the November 19, 2013 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee filed an opposition to the Plan, on the basis that on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor's Plan relies on the Motion to Value Collateral of Springleaf, which is also set for hearing on this date.

The court's ruling is to grant Debtor's Motion to Value Collateral of Springleaf Mortgage, ruling Trustee's objection moot. Otherwise, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). Thus, Trustee's Objection to Confirmation of Debtor's Plan is overruled and the Plan is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the

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

53. [13-20293](#)-C-13 KENNETH/SHIRLEY LAWRIE MOTION TO CONFIRM PLAN  
DS-2 David Springfield 9-18-13 [[93](#)]

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 18, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 18, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

November 19, 2013 at 2:00 p.m.

Page 102 of 112

54. [13-30893](#)-C-13 ANTONE CURTIS OBJECTION TO CONFIRMATION OF  
NLE-1 Michael O'Dowd Hays PLAN BY DAVID CUSICK  
10-15-13 [[36](#)]

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on October 15, 2013. 14 days' notice is required. That requirement was met.

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

(1.) The Plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$88.00 for 36 months, with a 0% dividend to unsecured creditors.

(3.) Debtor lists a 2004 Chevy Tahoe in Class 4 of the Plan, which states "Co-debtor spouse" makes the auto payment of \$288.00 per month listed

on Schedule J. According to the Proof of Claim filed by Santander Consumer USA on August 22, 2013, Debtor incurred this debt 4 months prior to filing this Chapter 13 on April 1, 2013. Debtor is listed as the co-buyer on the contract. The interest rate is 19.10%, and the term of the loan is 59 months.

Debtor did not disclose the date of payment to Debtor's attorney on the Statement of Financial Affairs.

Co-Debtor spouse did not file the Chapter 13 with Debtor; however, her income is listed on Schedule I at \$846.00 per month. Debtor is choosing to pay it directly, which will result in \$6,198.10 of finance charges (Claim #1, Page 4), or \$103.30 per month.

Debtor has not disclosed why the car was purchased and necessary. Debtor appears to reside within six miles of his employment and does not disclose any trade in or other vehicle used.

### **Debtors' Response**

Debtor responds by stating that he is substantially below median income, and filed for a Chapter 13 Bankruptcy to be allowed to treat his \$43,999 second unsecured debt. Debtor also states that he married recently, with a one year old son and an eleven year old daughter that resides with him and his wife.

Debtor and his wife's current combined net income is \$2,682.00. Debtor states that with regard to his tax refunds, for the entire 2013 tax year Debtor has been claiming single and five ("S-05") with his employer for both federal and state tax purposes, in order to have as much of his earnings available as possible. Consistently monthly amounts of \$93.32 for federal tax and \$17.60 for state taxes are being deducted from his \$3,048.00 salary, which represents 3.06% and .58% of his gross income, so it is unlikely that he will be receiving much in the way of a tax refund. Debtor attaches the first two pages of his 2012 Federal 1040 Tax Return to his response.

With respect to the vehicle purchase, Debtor states that he and his wife were in need of an additional vehicle, but does not provide supporting facts as to the changed circumstances that prompted the purchase. Debtor seems to indicate that he requires a large vehicle to accommodate the basketball team that he coaches, when transporting the players to games. Debtor asserts that he did not purchase the vehicle in contemplation of the bankruptcy filing.

Debtor's counsel then inserts his personal commentary as to why Debtor's wife was excluded from the bankruptcy filing. Counsel states that he determined that Debtor's wife did not need to file bankruptcy with her husband in the interest of helping the wife protect and maintain a "decent creditor score." Counsel also indicates that he advised Debtors not to pay the vehicle obligations through the Plan to keep the non-filing spouse from filing bankruptcy, being sued on the contract, and having her credit score negatively impacted.

Debtor's counsel then asserts that Debtor and his wife are considered to be low-income by government standards, and that their budget of \$2,594 and net income at \$2,682.00 "borders on subsistence." Counsel



argues that objections based on best efforts should be reserved for debtors with "high income or excessive lifestyles."

### **Trustee's Reply to Debtor's Response and Declarations**

Trustee reiterates that it had objected to confirmation of the plan, on the basis that Debtor's Plan pays \$88.00 per month for 36 months, with no less than 0% to unsecured claims (the Plan only projects a payment of attorney fees.) Debtor objected that the Plan did not represent Debtor's best efforts based on prior tax refunds and likely future refunds not being paid into the Plan, and the decision of Debtor to pay a recently purchased car directly and incur additional finance charges, rather than paying into the Plan.

#### *Tax Refund*

Debtor has not agreed to pay in any tax refund, or agree that any tax refund would be received by Debtor. Debtor filed his 2012 Tax Return as an exhibit, but this includes Debtor's entire social security number and a non-party name, who may be a minor, and that party's social security number. Trustee requests that the court order access to this document restricted and Debtor's counsel to file a redacted version.

After analyzing Debtor's 2012 tax return, Trustee asserts that returns do not support Debtor's conclusions. Debtor's monthly income if \$3,894.00 with the addition of Debtor's spouse and three dependent children. Debtor claims \$93.32 is being deducted for federal taxes, and \$73.00 by Debtor's spouse, which would be \$166.32 per month, or \$1,995.84 over a year. Debtor will reduce his taxable income by itemized deductions, but because Debtor has not filed a Schedule A, Trustee is not aware of the source. Presuming at least \$960.00 per month in mortgage interest, Debtor would reduce taxable income by \$11,520.00. If Debtor claims five exemptions for himself, his spouse, and the three children, the taxable income is further reduced by \$19,000.00.

This projects Debtor's taxable income at \$16,208.00, but if Debtor qualified for the child tax credit with three children under 17, that would be a \$3,000.00 credit resulting in no taxes owing. An earned income tax credit would result in a refund, even if no taxes are owed. Trustee believes that the tax return supports a finding that Debtor is likely to receive a tax refund of the \$1,995.84 that the Debtor is withholding for taxes this year, which would almost triple the plan payment. Trustee points out that the Debtor could simply resolve this matter by providing that any tax refund received for three years would be contributed to the Plan for the benefit of unsecured claims.

#### *Best Efforts*

Debtor's Plan proposes a plan term of 36 months. If the Plan was increased to a 60 month term, however, and the treatment of the 2004 Yukon was changed from Class 4 to Class 2 of the Plan, using a 4.5% interest rate, the total paid for the 60 months would be \$12,002.54, which could be paid at a monthly dividend of \$200.04. Creditor filed a secured claim in the amount of \$10,730.13 on August 22, 2013 (Court Claim #1). Debtor is currently paying the 2004 Yukon in Class 4 at \$288.00 per month. Debtor's Schedule J is showing an expense of \$288.00 per month for the Yukon. If the \$288.00 was taken out of the expenses, the total monthly expenses would be

\$2,306.00, which would leave a monthly net income of \$376.00. If the Plan completed in 60 months with a 0% dividend, proposing a plan payment of \$263.21 per month, this would leave Debtor with an additional \$112.79 per month for expenses.

The court is not satisfied that Debtor's Plan represents his best efforts, and finds Trustee's arguments regarding the necessity and benefit of paying prior tax refunds and likely future refunds into the Plan to be persuasive. As it stands, 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 Creditor Capitol One Auto Finance 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.

**IT IS FURTHER ORDERED** that the copy of Debtor's 2012 Federal Tax Return, filed with the court as an Exhibit to Debtor's Reply and designated on the court docket as Docket Number 42, be sealed and restricted from public access. Debtor's counsel shall provide a redacted version of the same tax return for the court and Trustee's reference.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on October 18, 2013. 14 days' notice is required; that requirement was met.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Debtor requests authorization from the court to enter into a loan modification agreement with Lender, JPMorgan Chase Bank, N.A.. Lender holds a deed of trust against Debtor's property, commonly known as 1025 Milton Street, West Sacramento, California.

After the Modification Effective Date, the new principal balance of the loan that will be due and payable on Debtor's loan will be \$246,797.35. The modified principal balance of the Note will include all amounts and arrearage that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to Debtor's loan.

The first modified payment in the amount of \$1,108.37 at 2.95% will be due on October 1, 2013. Debtor will make this payment for a total of sixty (60) months. A copy of the Loan Modification Agreement entered between Debtor and JPMorgan Chase Bank, containing its precise terms, is attached to the instant motion as an exhibit. (Dckt. No. 58, Exhibit A).

Lender JPMorgan Chase Bank, N.A. filed a statement of non-opposition to this motion on November 5, 2013 (Dckt. No. 61).

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

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

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

**IT IS ORDERED** that the Motion to Approve Loan Modification is granted and the Debtor may commence making the required payments of \$1,108.37

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 24, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtor cannot make payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor's Chapter 13 documents are incomplete. Debtor's Plan is blank and not signed or dated by Debtor. Debtor's Schedules A through J are blank, and Debtor's Statement of Financial Affairs is incomplete and only the first page was filed. Debtor did not list her prior cases on her voluntary petition, and does not list a monetary amount to be paid to Trustee in §1.01.

(2.) Debtor is delinquent in plan payments to Trustee to date. The case was filed on August 26, 2013, and §1.01 calls for payments to be received by Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Nothing has been received by Trustee from Debtor to date.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 15, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Debtor's Plan relies on the Motion to Value Collateral of Ford Motor Credit, which is set for a continued hearing on November 22, 2013. Debtor cannot afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6) on this basis.

(2.) Debtor lists Ford Motor Creditor's 2006 F-150 in Class 2 of the Plan and proposes a 0% interest rate. This does not pay the present value as of the effective date of the plan of the property secured by the claim (under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004)), even if the contract rate of interest is higher at 1.9% (Proof of Claim No. 2, page 6).

(3.) The Internal Revenue Service filed a priority claim on September 25, 2013, in the amount of \$482.94 (Court Claim #1). However, the Plan does not provide for the priority claim of the IRS.

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

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

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

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

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