

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

December 17, 2013 at 2:00 p.m.

1. [12-20300](#)-C-13 RUSSELL WALDEN MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso 11-12-13 [[99](#)]

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 November 12, 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,

December 17, 2013 at 2:00 p.m.

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 12, 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.

2. [13-33301](#)-C-13 GLORIA WELLINGTON
MDE-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
11-8-13 [[19](#)]

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 November 8, 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:

Creditor, The Bank of New York Mellon, opposes confirmation of the Plan based on the following:

1. Creditor is a party in interest as the holder of a claim secured by real property commonly known as 869 Christine Drive, Vacaville, California.
2. Creditor intends on filing its Proof of Claim in the amount of \$624,349.60, including arrearage in the amount of \$80,786.80. Creditor as not yet filed its Proof of Claim.
3. Creditor objects to Debtor's plan because it only provides for arrears in the amount of \$60,000. Debtor does not provide for the curing of the remaining default of \$20,786.80. 11 U.S.C. § 1322(b)(5).
4. Creditor further objects because its treatment under the plan is vague. Debtor provides for creditor in Class 1 of the Plan, but also provides for Creditor in Class 3 of the Plan, which states that the property will be surrendered.

Debtor has not sufficiently provided for Creditor's claim and needs to clarify treatment of Creditor under the Plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 12, 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.

3. [12-24503](#)-C-13 JOSE ROBIN/DOLORES
RIN-6 SANTAYANA
Michael Rinne

MOTION TO MODIFY PLAN
11-12-13 [[96](#)]

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 November 12, 2013. 35 days' notice is required. That requirement was met.

Tentative 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. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtor is delinquent \$6,065.53 under the proposed plan. \$61,223.53 has become due under the proposed plan and Debtors have paid \$55,158.00 to the Trustee.

Debtors' Response

Debtors agree with Trustee's opposition and state that commencing November 2013 they will begin to cure the delinquency by paying the sum of \$3,580.00 for four payments and then \$3,980.00 for 37 payments.

Debtors will include the following in the order confirming the plan: As of October 31, 2013, the debtors have paid a total of \$51,578.00 into the plan and commencing November 5, 2013, the plan payment shall be \$3,580.00 for 4 payments and then \$3,98.00 for 37 payments.

The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Modified 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 November 12, 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.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtors will include that As of October 31, 2013, the debtors have paid a total of \$51,578.00 into the plan and commencing November 5, 2013, the plan payment shall be \$3,580.00 for 4 payments and then \$3,98.00 for 37 payments.

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:

Prior Hearing

A prior hearing on Debtors' Motion to Confirm was held on November 19, 2013. At that hearing, the court continued the hearing on the Motion to December 17, 2013.

Chapter 13 Trustee's Opposition to Confirmation (filed 11/04/13, dkt. 55)

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee filed an opposition to Debtors' Motion to Confirm. The Trustee objected 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 proposes 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.

Chapter 13 Trustee's Supplemental Response (filed 11/25/13, Dkt. 62)

After the first hearing on Debtors' Motion, Chapter 13 Trustee filed a supplemental response based on Debtors' representation that they had adjusted their withholdings to eliminate a tax refund.

Based on Schedule I, at the time of filing Debtors' had a withholding of \$1,540 for payroll taxes and social security on an income of \$6,307. With 2013 rates of 6.2% for social security and 1.45% for Medicare, \$482.53 of this amount should be dedicated to social security and medicare. Debtors should have \$1,058 withheld for income taxes according to Schedule I.

The May 2013 pre-petition paystub Trustee received shows no federal and state tax deduction. The June 2013 paystub shows \$374 withheld for federal tax and \$79.77 for state tax. Debtors' 2012 Federal Tax Return showed \$3,896 total tax.

The court cannot determined whether Debtors can afford the current plan payments or could reasonably afford to pay more because the current Schedule I does not show the withholding amount at the time and it does not indicate on line 17 that the withholding is going to change.

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)(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, respondent creditor, and Office of the United States Trustee on December 3, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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 that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 25212 Darlington, Mission Viejo, California. The Debtor seeks to value the property at a fair market value of \$369,000.00 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 \$267,000.00. The second deed of trust secures a loan with a balance of approximately \$220,500.00. CIT Bank/U.S. Small Business Administration's third position UCC lien against the property is in the amount of \$100,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp.* (*In re Zimmer*), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift* (*In re Lam*), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CIT Bank/U.S. Small Business Administration secured by a UCC lien recorded against the real property commonly known as 25212 Darlington, Mission Viejo, 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 \$369,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

6. [13-33312](#)-C-13 ROBERT/CHRISTINA QUINLAN AMENDED OBJECTION TO
TSB-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID
P. CUSICK
12-4-13 [[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 November 21, 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 because, according to Debtors' Schedule I, average monthly income increased by \$1,591.22 while monthly net income only increased by \$65.22. Debtors filed amended Schedules I & J on November 20, 2013 based on Debtor Mr. Quinlin gaining new employment.

At the hearing on this matter, Debtors will need to explain to the court the discrepancy between the increase in average monthly income and the increase in net monthly income.

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.

7. [13-27113](#)-C-13 ALAN/ELAINE WEMPLE MOTION TO CONFIRM PLAN
 TJW-3 Timothy J. Walsh 10-23-13 [[51](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2013. Forty-two 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 xxxx 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:

The Chapter 13 Trustee opposes confirmation because a previous objection preventing confirmation of a previous plan proposed by Debtor was not resolved.

The court previously denied confirmation of Debtors' plan because of unclear information regarding office rental expense, a \$439.78 reduction in business expenses, and a \$440.28 increase in medical expenses. Civil Minutes, Dkt. 55.

Trustee reiterates the following objections:

1. Debtors admitted at the Meeting of Creditors that \$440.28 listed as a Business expense for medical expense may have been listed in error.
2. Debtors admitted at the Meeting of Creditors that the business phone expense, listed as \$570.61 is inflated and should be \$300.00, not including an \$80.00 monthly internet charge.
3. Debtors' October 23, 2013 Declaration (Dkt. 53) states the plan is being modified because an error in calculations on Schedules I & J. Debtors provided amended Schedules I & J; however, it does not appear that Debtors resolved Trustee's

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previous objection by explaining the reduction in business expenses and increase in medical expenses.

Trustee notes that Debtors Motion, Notice, and Declaration filed October 23, 2013 mirror the Motion, Notice, and Declaration for the previous Motion to Confirm, denied on October 22, 2013. The only change appears to be the Hearing Dates, Docket Control Number, and signature dates. Debtors still do not shed light or sufficiently explain the changes made to Schedule J.

Debtors' Response

Debtors respond to Trustee's objection and provide the following:

1. Debtors assert that the office rental space has always been included in the Business Income and Expenses format in line 10 of the Court's form, in both the original petition and amendment.
2. Debtors' admit that at the Meeting of Creditors they stated that the \$440.28 medical expense was actually a personal expense and did not belong in the profit/loss statement. On August 1, 2013, Debtors amended Schedule J to show on line 7 Medical and Dental Expenses totaling \$502.28. This amount includes the original \$62.00 figure plus the \$440.28 moved from the profit/loss statement. On October 21, 2013, Debtors file the Business Income and Expenses-Amended and deleted reference to the medical expense originally shown on the first Business Income and Expense, filed on May 24, 2013 with the petition. Exhibits 1-3, Dkt. 64.
3. Debtors assert that \$570.61 is a fair average telephone expense, although at the Meeting of Creditors they thought it may be higher than necessary.

In support of their contention, Debtors provide the following:

1. Telephone expense for September 2012 through February 2013, including internet, totaled \$3,423.58. The monthly average totals \$570.61.
2. Telephone expense for January 2013 through June 2013 totals \$3,800.41. The monthly average totals \$633.40.
3. Telephone expense for August 2012 through July 29, 2013 totals \$6,421.89. The monthly average totals \$535.15.

With the average monthly Telephone expense varying, Debtors contest that \$570.61 is a fair estimate. In support of the figures provided, Debtors attached relevant profit\loss statements as Exhibit 4, Dkt. 64.

4. The reduction in business expenses and increase in medication expenses is a result of Debtor moving \$440.28 from the business expense into medical expense. This change is reflected in amended Schedules. There is a 50 cent discrepancy in the figures presented to the court and Debtor has submitted and amended Schedule J to resolve this discrepancy. (Dkt. 62).

Discussion

Trustee's Objection was an effort to have Debtors explain some discrepancies in their filings that were not easily resolvable without assistance. Debtors did not provide a sufficient explanation previously, which resulted in denial of plan confirmation.

Here, in response to Trustee's Objection, Debtors have explained to Trustee and the court how the various changes in circumstance are reflected in the filings with the court and the court appreciates Debtors taking the time for this matter. In agreeing with the Trustee and asking for further clarification, the court does not intend to delay Debtors' progress, but merely ensure that the plan confirmed is feasible and sustainable. Especially where there may be contradictions between what is presented at the Meeting of Creditors and what is filed with the court, it is important for the court to ensure Debtors are adequately disclosing all pertinent information to the court.

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,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 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.

8. [13-33414](#)-C-13 TINA LESTER
KO-1 Mikalah R. Liviakis
Thru #10

OBJECTION TO CONFIRMATION OF
PLAN BY CRHMFA HOMEBUYERS FUND
12-2-13 [[31](#)]

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's Attorney on December 2, 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:

Creditor, CRHMFA Homebuyers Fund, opposes confirmation of Debtor's plan because Debtor does not properly treat its claim under the proposed plan and the plan is not feasible.

Debtor is liable, jointly with James Lester, to Creditor for a \$74,872.00 loan made to purchase energy efficient upgrades for Debtor's home. The loan is secured by a purchase money security interest in goods installed at Debtor's home and perfected by a fixture filing. Cal. UCC §§ 9103(a)-(b) and 9102(1) & (23).

Pursuant to Cal. UCC § 9334(d), Creditors purchase money security interest is first in priority. Section 9334(d) provides:

Except as provided in subdivision (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and all the following conditions are satisfied:

- (1.) The security interest is a purchase money security interest.
- (2.) The interest of the encumbrancer or owner arises before the goods become fixtures.

(3.)The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

Here, Creditor asserts that it provided purchase money financing to Debtors for the Collateral, its security interest in the Collateral arise before the Collateral became fixtures, and the fixture filing was made before the Collateral became fixtures. Therefore, Creditor asserts its security interest qualifies for priority over an earlier recorded deed of trust, other than a construction deed of trust, which is the exception described in subdivision (h) above.

Furthermore, the fixtures are readily removable replacements of domestic appliances that are consumer goods and, therefore, a perfected security interest in the fixtures has priority over conflicting interest of an encumbrancer or owner of the real property. Cal. UCC § 9334(e)(2).

Creditor's objects to Debtor's Plan because it classifies Creditor in Class 2 and describes Creditors claim in Section 6 as being secured by a junior deed of trust. Debtor proposed to value Creditor's claim at zero based on the lack of equity in the property commonly known as 2771 Hillcrest Drive, Cameron Park, California. Debtor's Schedule D lists Creditor's lien as being based on a second mortgage.

Creditor informed Debtor it would oppose the Motion to Value and counsel for Debtor agreed to withdraw the Motion and work together with Creditor to provide proper treatment for Creditor's claim. The parties have not been able to agree on a treatment that works in the context of the entirety of the Chapter 13 Plan.

As it stands, the plan is not feasible because it proposes to value Creditor's claim and makes no provision for payment to Creditor based on its secured claim. Also, the plan does not make provision for payment to Bank of America, which is listed in Schedule D as having a secured claim with a first mortgage lien in the subject property. 11 U.S.C. § 1325(b).

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 November 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 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, Bank of America, opposes confirmation of Debtor's plan because it is not feasible.

Creditor is the payee of a promissory note in the amount of \$258,258, secured by a first deed of trust on property commonly known as 2771 Hillcrest Drive, Shingle Spring, California. Arrears due to Creditor total \$29,034.25 as of October 17, 2013.

The plan does not provide for Creditor's claim and ongoing post-petition payments. To cure the pre-petition arrearage within 36 months, Creditor must receive \$806.51 per month through the Plan. Debtor's Schedule I and J indicate that Debtor only has excess income of \$95.00 per month. Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

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

10. [13-33414](#)-C-13 TINA LESTER OBJECTION TO CONFIRMATION OF
TSB-1 Mikalah R. Liviakis PLAN BY DAVID CUSICK
11-26-13 [[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 November 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 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 Debtor's plan for the following reasons:

1. The plan does not provide for the secured claim of Bank of America, N.A. listed on Schedule D. Debtor's lack of treatment could indicate that Debtor either cannot afford payments or that Debtor wants to conceal creditor treatment.

Debtor did not disclose the date the loan with Bank of America, N.A. was incurred.

At the Meeting of Creditors on November 21, 2013, Debtor stated that she intended to keep her residence and obtain a loan modification. Debtor stated that her application is under consideration. Debtor also stated that she is delinquent in mortgage payments but was uncertain of the amount of the delinquency. Trustee is uncertain whether

Debtor is currently making any payments on the loan.

2. Debtor's plan is not Debtor's best efforts, as required by 11 U.S.C. § 1325(b), for the following reasons:
 - a. Debtor is not proposing all disposable income into the plan. On Schedule J (Dkt. 25) Debtor lists and expense of \$1,469.44 per month for rent or mortgage expense. Line 19 of Schedule J indicates that the rental expense is "projected." Debtor's petition indicates she resides at 2771 Hillcrest Drive, Shingle Springs, California and Schedule A indicates Debtor holds an interest in the property. Debtor's rent is not currently a necessary expense and plan payment should be increased by \$1,469.44.
 - b. Debtor received a combined total of \$12,798 in tax refunds in 2012; however, no income is reported on Schedule I from tax refunds.
3. The plan relies on the Motion to Value the Secured Claim of CRHMFA Homebuyers Fund. After Trustee filed his Objection, the Motion to Value was withdrawn.
4. Debtors plan may not pass the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). At the Meeting of Creditors, Debtor indicated that she had an outstanding claim for child support arrears. This asset is not disclosed on Schedule B.

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 November 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 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 may not be Debtor's best effort under 11 U.S.C. § 1325(b). Form 22C shows Line 59, Debtor's monthly disposable income, with a net excess income of -\$1,253.68. Debtor is proposing a 60 month plan with 0% to general unsecured creditors.

Trustee recalculated figures on Form 22C and found Debtor's monthly disposable income to total at least \$1,739.83, which would provide general unsecured creditors with \$104,389.80.

2. Debtor's plan does not appear to pay in all disposable income over the duration of the plan. First, Debtor reports his non-filing spouse's net income totals \$3,161.51 per month and that his business income nets \$7,111 per month, for a total monthly income of \$10,272.51. However, Debtor's joint personal checking account at Bank of America shows average monthly deposits of \$12,832 per month and non-filing spouse receives a \$250.00 bi-weekly paycheck directed to her personal account at Chas Bank. The monthly deposit into the joint account does not include \$541.66 of wife's actual wages. Total deposits from both sources appears to be \$13,373.66.

Second, Debtor's gross business income is listed as \$18,000 on Schedule I; however, the business bank accounts for Worley Real Estate reflect average bank deposits for five months preceding Debtor's petition of \$26,900 per month.

Third, Debtor provided statements for Worely Properties that appears to be the business account for the business partnership listed on Schedule B #21. Debtor does not report any income from this source; however, bank statements reflect average deposits of \$4,467 per month. There was one large deposit of \$30,000 in June 2013, and the rest are generally low, a little over \$100.00.

3. The plan is not Debtor's best effort based on deductions and expenses included on Schedules I and J.

First, on Schedule J, Debtor deducted \$1,200 per month for childcare. Debtor lists three dependants on Schedule I, aged 11, 14, and 19 and does not itemize the expenses. Debtor's tax returns for 2012 and 2011 lists no deduction for childcare expenses. Trustee has not received receipts and cancelled checks verifying the childcare expenses requested on November 7, 2013.

Second, Schedule I deducts \$2,323 for non-filing spouse's tax withholding, which is approximately 30% of her income. According to the paystubs provided for non-filing spouse, the actual tax withheld from her pay averages closer to \$1,395 per month, which is 18% of her income.

Third, \$936.39 is deducted from non-filing spouse's payroll for health insurance on Schedule I. Non-filing spouses paystubs reflect that \$1,376.89 in health insurance is paid monthly by spouse's employer, Sacramento Sheriff's Department. Debtor deducts an additional \$432 on Schedule J for health insurance and has not responded to Trustee's requests for evidence of this expense.

Fourth, Schedule J includes a deduction of \$798 for Class 4 auto payments paid by non-filing spouse; however, Debtor has not provided information concerning whether the loans will pay off during the life of the plan and has not responded to Trustee's request for more information.

Fifth, Schedule J includes a deduction of \$650 for non-filing spouse's credit cards. Debtor intends to confirm a plan paying \$670 per month and 0% to general unsecured claims while non-filing spouse pays 100% of her unsecured claims outside the plan at \$650 per month. Debtor has not indicated why this is appropriate.

Sixth, Schedule J deducts \$170 per month for non-filing spouse's student loans. Debtor has not provided any information on the balance of the accounts and whether the loans will pay off during the life of the plan. Debtor has not responded to Trustee's requests for additional

information.

Seventh, Debtor deducts \$74 for life insurance on Schedule J and also lists on Schedule I \$227.50 for life insurance deducted from non-filing spouse's payroll. Debtor lists only one life insurance policy on Schedule B. It appears that either the expense listed in error or Debtor did not disclose all assets in Schedule B.

Eighth, Debtor deducts \$850.00 per month on Schedule J for R&M. Debtor has not explained why this is a necessary expense and this should be disallowed until sufficient explanation is provided.

4. Debtor's plan is not his best efforts because all assets are not disclosed.

Debtor provided Trustee with bank statement for eight bank accounts; however, only four are listed on Schedule B. Also, Debtor deducts \$74 for life insurance on Schedule J and also lists on Schedule I \$227.50 for life insurance deducted from non-filing spouse's payroll. Debtor lists only one life insurance policy on Schedule B. It appears that either the expense listed in error or Debtor did not disclose all assets in Schedule B.

It is clear from Trustee's thorough Objection that there are major concerns regarding disclosure of information and assets in Debtor's case. The court urges Debtor and Debtor's counsel to take time to ensure all information is accurate and all assets are accurately provided for in proposing future plans. 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 Debtors and Debtors' Attorney on November 21, 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:

Creditor, Franchise Tax Board, has filed a proof of claim in Debtors' case and has a priority claim in the amount of \$79,964.94 and a general unsecured claim in the amount of \$156,838.69. Claim Nos. 1-2. Creditor opposes confirmation of Debtor's plan based on the following:

1. Debtors to not meet the eligibility requirements for Chapter 13. 11 U.S.C. § 109(e). Pursuant to § 109(e), only an individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated unsecured debts of less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525 may be a Chapter 13 Debtor.

Here, Creditor has unsecured claims totaling \$236,803.63 and the Internal Revenue Service's proof of claim reflects an unsecured claim totaling \$542,404.09. The sum of these noncontingent, liquidated, unsecured debts is \$779,207.72, and exceeds the debt limits of 11 U.S.C. § 109(e).

2. Debtors have not demonstrated they will be able to make all payments under the Plan. 11 U.S.C. § 1325(a) (6). While the plan provides for full payment of priority claims, Debtors have not filed their California state income tax returns for years 2007-2012 and Creditor cannot determine the amount of Debtors' tax liability or whether Debtors are able to pay in full the yet to be determined liability.

3. The plan does not pass the best interests of creditors test. 11 U.S.C. § 1325(a)(4). Based on Debtors' Schedules B and C, there is nonexempt equity in the amount of \$152,880.00 (for the equity in "dental practice accounts receivable," a "2004 Honda CRV EX," and a 2003 Honda LS) available for the benefit of unsecured creditors. However, the plan provides for a 0% payment to allowed unsecured creditors and does not satisfy the best interest of creditors test.
4. Debtors are in violation of 11 U.S.C. § 1308 and 11 U.S.C. § 1329(a)(9) because Debtors have not filed all applicable California income tax returns.
5. The plan does not provide for Creditor's secured claim and Creditor does not accept the plan.

Creditor requests the court deny confirmation of the plan, or alternatively, dismiss the case for ineligibility under 11 U.S.C. § 109(e).

Creditor's Objection is supported by the evidence provided and corroborated by the Objections of the Chapter 13 Trustee and Internal Revenue Service. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. At the hearing on the Objection, Debtors should be prepared to explain to the court why their case should not be dismissed or converted for lack of Chapter 13 eligibility.

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.

13. [13-31815](#)-C-13 DAVID/ANN COLTRIN
IRS-1 John David Maxey

OBJECTION TO CONFIRMATION OF
PLAN BY INTERNAL REVENUE
SERVICE
11-21-13 [[32](#)]

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' Attorney and US Trustee on November 21, 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:

Creditor, Internal Revenue Service, has filed a proof of claim in Debtors' case and has a secured claim in the amount of \$266,232.51. The IRS also has a priority claim in the amount of \$477,570.30 and a general unsecured claim in the amount of \$64,833.79. Many of the tax liabilities are estimated as no returns for those periods were filed. Creditor opposes confirmation of Debtor's plan based on the following:

1. The plan does not provide for the IRS's secured claim and does not provide for full payment of its priority claim. The plan provides 0% dividend to unsecured general claims. Overall, the plan is underfunded with Debtors proposing to make payments of \$436.00 for 60 months.
2. Pursuant to 11 U.S.C. § 1325(a)(9), as a condition to confirmation, Debtors must file all returns required under 11 U.S.C. § 1308. Debtor has not filed several returns.

Creditor requests the court deny confirmation of the plan.

Creditor's Objection is supported by provided evidence and corroborated by Objections filed by the Chapter 13 Trustee and Franchise Tax Board. 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 Debtors and Debtors' Attorney on November 20, 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 objects to confirmation of Debtor's plan based on the following:

1. Debtor is \$436.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$436.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date. Debtor cannot make the plan payments. 11 U.S.C. § 1325(a)(6).
2. Trustee has insufficient evidence to determine whether Debtors can make the plan payments. First, Debtor Ann Coltrin did not appear at the First Meeting of Creditors in violation of 11 U.S.C. § 343.

Second, Debtors did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

Third, Debtor Mr. Coltrin admitted at the Meeting of Creditors that not all tax returns during the four year period preceding the filing of the petition were filed. 11 U.S.C. §§ 1308 & 1325(a)(9).

Fourth, Debtor is ineligible for Chapter 13 relief under 11 U.S.C. § 109(e) because according to the claims of the Franchise Tax Board and the Internal Revenue Service (Claims 1 and 3, respectively) the Debtors' unsecured debts total \$779,207.72. This amount exceeds the unsecured debt limit total of \$383,175.00.

Sixth, Debtors plan will not complete in 60 months. Debtors propose to pay \$436.00 for 60 months, or \$26,160.00; however, the plan proposes to pay \$287,460.00 or priority debt (Page 4, §2.13).

The Trustee's Objections are supported by the evidence presented and corroborated by Objections to Confirmation filed by the Franchise Tax Board and the Internal Revenue Service. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. At the hearing on the Objection, Debtors should be prepared to explain to the court why their case should not be dismissed or converted for lack of Chapter 13 eligibility.

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.

15. [13-30319](#)-C-13 BELLA DELA PAZ
NUK-2 Najeeb U. Kudiya

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE BANK AND/OR
MOTION TO AVOID LIEN OF FIRST
FRANKLIN FINANCIAL CORP.
11-8-13 [[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, respondent creditor, and Office of the United States Trustee on November 8, 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 to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

Despite the caption for this Motion, the secured creditor whose secured claim is the subject of this Motion is First Franklin Financial Corp. and not Nationstar Mortgage. Nationstar is the holder of a first deed of trust on the relevant property. Debtor's Notice, Motion, and Service correctly identify First Franklin Financial Corp. as the subject secured creditor.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 209 Mira Loma Drive, Oroville, California. The Debtor seeks to value the property at a fair market value of \$315,143.08 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 \$353,034.05. First Franklin Financial Corp.'s second deed of trust secures a loan with a balance of approximately \$132,143.08. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220

(9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of First Franklin Financial Corp. secured by a second deed of trust recorded against the real property commonly known as 209 Mira Loma Drive, Oroville, 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 \$315,143.08 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 November 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 to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1815 Creekwood Drive, Yuba, California. The Debtor seeks to value the property at a fair market value of \$170,000.00 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 \$255,700.00. Golden 1 Credit Union's second deed of trust secures a loan with a balance of approximately \$37,400.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden 1 Credit Union secured by a second deed of trust recorded against the real property commonly known as 1815 Creekwood Drive, Yuba, 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 \$170,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. [13-32432](#)-C-13 JEFFREY/RACHELLE FILER
DAO-1 Dale A. Orthner
Thru #18

MOTION TO VALUE COLLATERAL OF
SCHOOLS FINANCIAL CREDIT UNION
11-18-13 [[37](#)]

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

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

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The respondent creditor, 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 Value without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Honda Odyssey. The Debtor seeks to value the property at a "fair market value" of \$8,000.00 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).

Debtor considered the following facts in determining the value of the vehicle:

1. The odometer of the vehicle shows 130,000 miles driven.
2. Damage to front bumper from a collision three years ago.
3. Spider crack approximately four inches in diameter in the center of the windshield.
4. Review of online car pricing sources, such as Kelley Blue Book and Edmunds.com. Printouts provided as Exh. A.

Al though not addressed by Debtors, the lien on the vehicle's title appears to secure a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$20,570.57.

Creditor's Objection

Creditor, Schools Financial Credit Union, objects to Debtor's Motion to Value. First, Creditor objects to service at the address listed for Schools Financial Credit Union on the certificate of service. Service was not made in accordance with FRBP 7004(b) (3), as Creditor is a corporation and service should have been to the address set forth in the records of the

Secretary of State for the State of California or to the attention of an officer at its administrative offices as shown on the records of NCUA.

Second, Creditor objects based on Local Bankr. Rules 9014-1(d) & (e). Pursuant to 9014-1(d), motions must cite the legal authority relied upon by the filing party. Rule 9014-1(e) requires motions to be "accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declaration shall comply with Fed.R.Civ.P. 56(e)."

As to LBR 9014-1(d), Creditor makes note that while Debtors address 11 U.S.C. § 506(a), they do not mention the requirements set forth in the "hanging paragraph" of 11 U.S.C. § 1325(a) and provide not facts to value the collateral under 11 U.S.C. § 506(a). Furthermore, 11 U.S.C. § 1325(a) applies to debts provided for by the plan and this debt is being paid outside the plan.

Third, Creditor argues that Debtors have not applied the correct legal standard to value the collateral. Debtors' Motion refers to 11 U.S.C. § 506(a)(2) which requires Debtors to determine the replacement value of the vehicle based on the price a retail merchant would charge for the property. Creditor notes that Debtors' Declaration uses the private party value, which is not the correct standard.

Fourth, Creditor argues Debtors have presented no competent admissible evidence to establish the replacement value of the vehicle. Creditor states that Debtors have not established their qualification to select comparable and make adjustments to comparable, which usually requires expert testimony. Creditor asserts that costs of repair are an area of specialized knowledge and there is no competent evidence to value the costs of repair to Debtors' vehicle. Creditors object because Debtors do not provide detail regarding the style, equipment, and options relevant to the vehicle. Creditor also points out that mileage information is inconsistent. Schedule B, dated September 24, 2013, lists mileage as 129,000; Schedule A, dated October 29, 2013, lists mileage as 132,00; and in Debtor's Declaration, dated November 13, 2013, the mileage is "approximately 130,000." Creditor contends that the above information indicates that Debtors lack personal knowledge of the vehicle.

Finally, Creditor asserts there is no legal basis for the relief sought in paragraph 13 of the Motion. In paragraph 13 on page 3, Debtors state that the security interest of Creditor shall be deemed satisfied when all payments are made under the plan. Creditor does not agree to release its lien if Debtors complete their payments under the plan. Creditor argues that this paragraph impermissibly attempts to modify provisions of paragraph 2.11 of the plan, which states that Class 4 claims are not modified by the plan.

Discussion

(1.) Lack of Service. The court is aware that service was not to the proper entity, as listed in the Certificate of Service filed on November 18, 2013 (Dkt. 41). However, the as Creditor has provided the court with a very comprehensive objection to Debtors' Motion, the court is not inclined to rule based on deficient service when, in fact, service was sufficient. The goal of the Local Rule and Bankruptcy Rules regarding service is to ensure relevant parties receive notice in time to appropriately respond to Motions and attend hearings. Here, Creditor responded and will have the opportunity

to attend the hearing on this matter.

(2.) Lack of Legal Basis to Value the Secured Claim. While Debtors did cite to 11 U.S.C. § 506(a), there was no discussion of 11 U.S.C. § 1325(a). This was noted by the court above. The court attempted to find a copy of the security agreement executed between Debtor and Creditor in both parties' exhibits; however, it appears none was provided. Therefore, the court is unsure whether the requirements of the "hanging paragraph" following 11 U.S.C. § 1325(a) (9) are met.

Furthermore, the 11 U.S.C. § 1325(a) hanging paragraph is subject to the qualifications of 11 U.S.C. § 1325(a) (5), which only applies to allowed secured claims provided for by the plan. Debtors listed Creditor's claim in Class 4 of the plan, which includes all secured claims paid directly by Debtor or a third party and not provided for by the plan.

(3.) Application of the Correct Legal Standard. Pursuant to 11 U.S.C. § 506(a) (2), the value of personal property securing an allowed claim shall be determined based on the replacement value of the property. Replacement value is defined as the price a retail merchant would charge for the property. Debtors provide an opinion of the "fair market value" of the vehicle being \$8,000.00. Creditor argues that the pricing guidelines Debtor attached as Exh. A, Dkt. 40, show private party values and are an insufficient standard.

Debtors stated in their declaration that part of their consideration in determining value was review of different pricing guides, such as the one attached in Exh. A. The pricing guide attached includes values for private party, trade-in, and dealer retail, contrary to the mischaracterization of Creditor. As Debtor only relied in part on these pricing guides, the court is not persuaded that the Debtors' eventual opinion of value was premised on an incorrect legal standard. While Debtors did not refer to the "replacement value," they did testify as to their opinion of the "fair market value" of the vehicle, which constitutes some evidence. Creditor merely attached their own Kelley Blue Book estimate as an Exhibit (Dkt. 57).

(4.) Evidence to Support Replacement Value. Creditor makes many arguments attempting to undermine the value provided by Debtor. As previously stated, the court values personal property using the replacement value as defined pursuant to 11 U.S.C. § 506(b). The evidence before the court consists of Debtors' opinion of value, taking into consideration the specific condition of the vehicle and a Kelley Blue Book printout provided by Creditor with a price range. Creditor never states in its Motion what value it would place on the vehicle. Creditor's evidence is not specific to Debtors' vehicle, which is the vehicle the court is to value. Creditor's approach undermines the definition of "replacement value," which requires consideration of the condition of the vehicle. The court grants more weight to Debtors' evidence and would set the value of the vehicle at \$8,000.00.

(5.) Lack of Legal Basis for Relief Sought. In their Motion, Debtors' seek to value the secured claim of Creditor at \$8,000.00 and had the security interest of Creditor deemed satisfied when all payments are made under the plan. What Debtor seeks is contrary to the intent reflected in Debtors' plan. Debtor lists Creditor in Class 4 of the plan, which provides for claims that are not modified by the plan. Debtors needs to reclassify Creditor before attempting modifying its secured claim through the Plan.

The court's decision is to deny the Motion to Value the secured claim of Schools Financial Credit Union because Debtor is attempting to modify the secured claim of a creditor listed in Class 4 of Debtors's plan and Class 4 contains creditors who are to be provided for outside of the plan and whose claims are not to be modified by the plan. Furthermore, Debtors needs to provide argument and evidence that their requires complies with the requirements of 11 U.S.C. § 1325(a) (5) hanging paragraph.

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

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

The Motion to Value Collateral 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 denied without prejudice

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 creditors, and Office of the United States Trustee on November 18, 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. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of First National Bank of Omaha for the sum of \$11,204.55. The abstract of judgment was recorded with Yuba County on May 22, 2013. That lien attached to the Debtor's residential real property commonly known as 1905 Slingshot Drive, Plumas Lake, 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 \$230,000 as of the date of the petition. The unavoidable consensual liens total \$169,096.39 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.730 in the amount of \$60,903.61.00 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.

December 17, 2013 at 2:00 p.m.

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 First National Bank of Omaha, Yuba County Superior Court Case No. YCSCCVG 12-0000440, recorded on May 22, 2013, 2011, with the Yuba County Recorder, against the real property commonly known 1905 Slingshot Drive, Plumas Lake, 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.

19. [13-33148](#)-C-13 CAROLYN KIRKPATRICK
TSB-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
11-19-13 [[16](#)]

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 Debtor and Debtor's Attorney on November 19, 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 basis that it appears that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). According to Debtor's Schedule I, Debtor is unemployed and her plan relies heavily on the following sources of income:

\$658.66 in unemployment
\$600.00 "Brother Rent"
\$1,800.00 "Family Rent"
\$2,800.00 "Sister"

Debtor's Statement of Financial Affairs does not reflect any rental income or assistance from her sister in Question #2, and only unemployment income for 2012 and 2013 has been listed. No income verification from Debtor has been received, showing that Debtor has received rental and financial assistance from her sister. No declarations have been filed by Debtor, brother, family, or sister stating their ability and willingness to either assist or verify that rent is being paid to Debtor.

Additionally, Debtor admitted at the First Meeting of Creditors that the 2010 listed in Class 2, was recently totaled in an accident. Debtor has not filed an amended plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

20. [13-33253](#)-C-13 STEPHEN/KYMBERLY WEINANDY OBJECTION TO CONFIRMATION OF
TSB-1 Diana J. Cavanaugh PLAN BY DAVID CUSICK
11-19-13 [[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 Debtors, Debtor's Attorney on November 19, 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 opposes confirmation of the Plan on the basis that Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relied on the Motion to Value Collateral of Santander Consumer, USA, which was set for hearing on December 10, 2013.

Debtors' Motion to Value Collateral of Santander Consumer USA, DJC-1, was heard and granted by this court on that date; the subject property of that Motion, Debtors' 2005 Toyota 4Runner Sport SUV 4DR, was valued at the replacement value of \$12,092.00. Thus, Trustee's singular objection is resolved and this objection is consequently moot.

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 the Objection is overruled as moot

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and, Debtors' Chapter 13 Plan filed on October 11, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [13-33953](#)-C-13 PAUL/ANGELA JIMENEZ
SCG-1 Sally C. Gonzales

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
11-18-13 [[14](#)]

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

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

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). A creditor 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 set the Motion to Value Collateral of JPMorgan Chase Bank, N.A. for an evidentiary hearing, to be held 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 motion is accompanied by the Debtor's declaration. Debtors are the owner of the subject real property commonly known as 7324 Candlelight Way, Citrus Heights, California. Debtors seek to value the property at a fair market value of \$120,000.00 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 \$130,218.00. Creditor JPMorgan Chase's second deed of trust secures a loan with a balance of approximately \$44,092.00. The respondent creditor's claim secured by a junior deed of trust appears to be completely under-collateralized. Debtors assert that creditor's secured claim should be 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).

Creditor's Response

JPMorgan Chase Bank, N.A., successor in interest by purchase from the Federal Deposit Insurance Corporation as receiver for Washington Mutual Bank, is the holder of the secured claim, the second deed of trust, on the subject property. Creditor contests Debtors' allegation that the property has a market value of \$120,000, and have obtained a Broker's Price Opinion, estimating the value of the residence to be \$155,000. A true and correct copy of the Opinion is attached as Exhibit C.

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Creditor now requests the opportunity to obtain its own independent appraisal of the property, inclusive of an interior inspection of the property.

Because there are disputed facts that remain to be resolved, the court will set the Motion to Value Collateral, filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a), for an evidentiary hearing on [date] at [time] to allow Creditor to secure its desired appraisal, and for Debtors to present and explain their Market Comparison report for the property, which indicates that based on the property's features, location, and current comparative sales in the neighborhood within the last 90 days, that the current market value estimate for the home as calculated by realtor is \$120,000.00. At the hearing, Creditor will be given an opportunity to present their appraisal, which will include an inspection of the interior of the subject property.

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

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

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

IT IS ORDERED that the Motion to Value Collateral, filed pursuant to 11 U.S.C. § 506(a), will be set for an evidentiary hearing on [date] at [time]

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 November 5, 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 353 Columbia Cir., Benecia, California. The Debtor seeks to value the property at a fair market value of \$244,000.00 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 \$253,900.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$139,900.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by

Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 353 Columbia Cir., Benicia, 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 \$244,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 19, 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 afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor's plan relies on a Motion to Value Collateral being filed for Ocwen Loan Services, listed in Class 2C. Debtor has not filed a Motion to Value Collateral to date.
2. Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor lists the Internal Revenue Service on Schedule E for May, 2012 and August 23, 2012 federal taxes, in the amount of \$21,013.29. This creditor is listed in Class 5 in the amount of \$21,013.00. The Internal Revenue Service filed a secured claim on November 5, 2013, in the amount of \$24,289.86. Debtor's plan does not list the Internal Revenue Service on Schedule D or in Debtor's plan.
3. Debtor admitted at the First Meeting of Creditors held on November 14, 2013, that the 2005 Toyota Highlander listed in Class 4 should be listed in Class 2. The loan will mature within the life of Debtor's Plan.
4. Debtor admitted at the First Meeting of Creditors that she receives approximately \$50.00 to \$75.00 per month from Primerica Financial Services, listed on Line #18, of Debtors' Statement of Financial

Affairs. This income is not listed on Schedule I.

5. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. § 109(e). According to Section 2.15 of the Plan, the unsecured creditors have debts totaling \$512,317.93. According to Schedule F and the unsecured portion of Schedule D, Debtor's unsecured claims total approximately \$148,224.69. The unsecured debt limit totals \$383,175.00.

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)(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 November 6, 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 2125 Glengary Drive, Redding, California. The Debtor seeks to value the property at a fair market value of \$85,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$107,632.40. Creditor GMAC Mortgage Corporation DBA Ditech.com's second deed of trust secures a loan with a balance of approximately \$57,000. 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 GMAC Mortgage Corporation DBA Ditch.com, secured by a second deed of trust recorded against the real property commonly known 2125 Glengary Drive, Redding, 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 \$85,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [13-23467](#)-C-13 ANDRES DELGADILLO MOTION TO CONFIRM PLAN
RPH-6 Robert P. Huckaby 10-30-13 [[95](#)]
CASE DISMISSED 11/19/13

Final Ruling: The case having previously been dismissed on November 19, 2013, the Motion is denied as moot.

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

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

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

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

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 November 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 is the owner of the subject real property commonly known as 7857 Whisperwood Way, California. The Debtor seeks to value the property at a fair market value of \$159,566.00 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 \$336,325.00. Creditor Green Planet Servicing LLC's second deed of trust secures a loan with a balance of approximately \$37,933.00. 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 Planet Servicing, LLC, secured by a second deed of trust recorded against the real property commonly known as 7857 Whisperwood Way, 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 \$159,566.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

27. [13-29776](#)-C-13 SUSAN MARRON MOTION TO CONFIRM PLAN
CA-2 Michael David Croddy 10-31-13 [[47](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 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 court's tentative decision is to continue the Motion to Confirm the Amended Plan to January 28, 2014 at 2:00 pm. No appearance is required.

On December 2, 2013, Debtor filed a Motion to continue the Debtor's Motion to Confirm Debtor's First Amended Chapter 13 Plan to January 28, 2013, at 2:00 pm. Debtor makes this request to align the scheduling of the Motion to Confirm Plan with certain objections to proofs of claims that are being heard on that date.

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

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

The Motion to 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 Debtor's Motion to Confirm Plan is continued to January 28, 2013 at 2:00 pm.

28. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON OBJECTION TO CLAIM OF OLD
RK-5 Richard Kwun REPUBLIC INSURANCE COMPANY,
Thru #32 CLAIM NUMBER 17
11-1-13 [[52](#)]

Final Ruling: Debtors having filed a Stipulation Resolving the Objection to Claim, signed by both Old Republic Insurance Company and Debtors, and expressly withdrawing the pending Objection to Claim; and the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the Stipulation and Withdrawal to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Claim, and good cause appearing, **the court dismisses without prejudice the Debtors' Objection to Claim of Old Republic Insurance Company.**

The stipulation states that the claim filed by Old Republic on October 10, 2013, Claim No. 17-1, in the amount of \$60,167.05, will be allowed in its entirety and will be treated as an unsecured claim in accordance with Debtors' Chapter 13 Plan. The Objection to the Proof of Claim was hereby withdrawn by Debtors, and the hearing on this objection vacated. The stipulation was signed by Counsel for the Debtors and Counsel for the Old Republic Insurance Company.

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.

An Objection to Claim of Old Republic Insurance Company, Claim Number 17 having been filed by Debtors, the Debtors having filed a stipulated withdrawal to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Claim of Old Republic Insurance Company, Claim Number 17 on the claims registrar, is dismissed without prejudice.

29. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON OBJECTION TO CLAIM OF VANDA,
RK-6 Richard Kwun LLC, CLAIM NUMBER 5
11-1-13 [[56](#)]

Final Ruling: The Debtors having filed a Withdrawal of the Objection to Claim of Vanda, LLC, Claim No. 5, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Claim of Vanda, LLC, Claim No. 5 was dismissed without prejudice, and the matter is removed from the calendar.**

30. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON OBJECTION TO CLAIM OF CAPITAL
RK-7 Richard Kwun ONE BANK (USA), N.A., CLAIM
NUMBER 8
11-1-13 [[60](#)]

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 November 1, 2013. 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(c)(1) and (d)(3). 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 8 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$3,480.20. No appearance required.

The Proof of Claim at issue, listed as claim number 8-1 on the court's official claims registry, asserts a \$3,519.19 claim. The Debtor objects to the Proof of Claim on the basis of discrepancy between the amounts listed on Creditor's former and present Proof of Claim.

Background

Debtors first filed for Chapter 13 Bankruptcy on December 13, 2010. In that case, Capital One ("Capital") filed a timely claim for \$4,628.00. Pursuant to Debtors' then confirmed plan, \$1,148.60 was paid on Capital's claim. Debtors' case was dismissed after the Internal Revenue Service filed a Motion to Dismiss, based on debtors not fully paying their tax liabilities in 2011 (which violated Section VI, provision 6.02(c) of their confirmed Plan) and not timely filing their 2011 post-petition federal income tax return--all of which constitutes a material default under 11 U.S.C. § 1307(c)(6) and provides cause for dismissal.

As of April 12, 2013, the date Debtors' case was dismissed, Capital's claim stood at \$3,480.20, since pursuant to Debtors' first confirmed plan, \$1,480.60 had already been distributed to Capital. At the commencement of their second Chapter 13 case, filed on May 27, 2013, Capital a Proof of Claim for \$3,519.20, an amount that was \$39 dollars higher than the balance remaining in their 2010 case. Capital did not provide an explanation for the \$39 increase. Debtors assert that assuming, *arguendo*, that \$39 was the added interest, then the claim appreciated by 1.1% in 45

days (0.024%/day). The annual percentage rate therefore would be 9%, a plausible rate of interest only if it was supported with evidence from the creditor. Debtors assert that on the basis, the claim cannot be presumed valid, and either should be disallowed in its entirety or reduced to \$3,480.20.

Discussion

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

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

Here, Capital's filing is sorely lacking and does not qualify for the evidentiary benefit of Rule 3001(f). Capital's Proof of Claim, listed as Claim Number 8 on the court's official claims registrar, was filed on July 8, 2013 and does not include any documentation explaining the amount. The basis for the claim is listed as "Money Loaned," and the amount of claim is indicated as \$3,519.19. Capital checks the box on the claim form that states: "Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges." Capital does not, however, attach any additional paperwork, explaining how it arrived at the value claimed or the subject loan agreement. Thus, Capital's claim is not prima facie evidence of the validity and amount of the claim. And even if the claim was eligible for this presumption, Debtors have overcome their burden of proof in objecting to the disparity between the two claim amounts.

Debtors state in their declaration that they have already paid, as distributed by the Trustee, \$1,148.60 to Creditor Capital One Bank, on the same claim. In their 2010 case, the same Creditor filed a \$4,628.80 claim. The difference between the original claim, and the amount purported distributed under Debtors' old plan, would be \$3,480.20. Capital does not explain the discrepancy between this amount and the presently claimed value of \$3,519.19--it does not do so through its filed Proof of Claim documents, and it does not do so here as it has not responded to this duly noticed Objection to Claim.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained and the creditor's claim is allowed in the amount of \$3,480.20.

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 Capital One Bank (USA), N.A., 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 8 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$3,480.20.

31. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON OBJECTION TO CLAIM OF CAPITAL
RK-8 Richard Kwun ONE BANK (USA), N.A., CLAIM
NUMBER 9
11-1-13 [[64](#)]

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 November 1, 2013. 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(c)(1) and (d)(3). 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 9 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$6,645.30. No appearance required.

The Proof of Claim at issue, listed as claim number 9-1 on the court's official claims registry, asserts a \$6,725.19 claim. The substance of the instant Objection is virtually identical to that of Debtors' other objection to Capital One's other Proof of Claim in this bankruptcy case; Debtor objects to the Proof of Claim on the basis of discrepancy between the amounts listed on Creditor's former and present Proof of Claim.

Background

Debtors first filed for Chapter 13 Bankruptcy on December 13, 2010. In that case, Capital One ("Capital") filed a timely claim for \$8,838.50. Pursuant to Debtors' then confirmed plan, \$2,193.30 was paid on account of Capital's claim. Debtors' prior case was dismissed after the Internal Revenue Service's Motion to Dismiss was granted. The Motion to Dismiss was based on debtors not fully paying their tax liabilities in 2011 (which violated Section VI, provision 6.02(c) of their confirmed Plan) and not timely filing their 2011 post-petition federal income tax return--all of which constituted a material default under 11 U.S.C. § 1307(c)(6) and provided cause for the dismissal of their case.

As of April 12, 2013, the date Debtors' case was dismissed, Capital's claim stood at \$6,645.30, since pursuant to Debtors' first confirmed plan, \$2,193.30 had already been distributed to Capital. At the commencement of their second Chapter 13 case, filed on May 27, 2013, Capital filed a Proof of Claim for \$6,725.20, an amount that was \$79.90 dollars higher than the balance remaining in their 2010 case. Capital did not provide an explanation for the \$79.90 increase. Debtors assert that

assuming, *arguendo*, that \$79.90 was the added interest, then the claim appreciated by 1.2% in 45 days. The annual percentage rate therefore would therefore be 9.7%, a plausible rate of interest only if it was supported with evidence from the creditor. Debtors assert that on the basis, the claim cannot be presumed valid, and either should be disallowed in its entirety or reduced to \$6,645.30.

Discussion

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

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

Here, Capital's filing is sorely lacking and does not qualify for the evidentiary benefit of Rule 3001(f). Capital's Proof of Claim, listed as Claim Number 9 on the court's official claims registrar, was filed on July 8, 2013 and does not include any documentation explaining the amount. The basis for the claim is listed as "Money Loaned," and the amount of claim is indicated as \$6,725.19. Capital checks the box on the claim form that states: "Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges."

Capital does not, however, attach any additional paperwork, explaining how it arrived at the value claimed or the loan agreement entered into between Debtors and Creditor. Thus, Capital's claim does not provide prima facie evidence of the validity and amount of the claim. Even if the claim was eligible for this presumption, Debtors have overcome their burden of proof in objecting to the disparity between the two claim amounts.

Debtors state in their declaration that they have already paid, as distributed by the Trustee, \$2,193.30 to Creditor Capital One Bank, on the same claim. In their 2010 case, the same Creditor filed a \$8,838.50 claim. The difference between the original claim, and the amount purported distributed under Debtors' old plan, would be \$6,645.30. Capital does not explain the discrepancy between this amount and the presently claimed value of \$6,725.19--it does not do so through its filed Proof of Claim documents, and it does not do so here as it has not responded to this duly noticed Objection to Claim.

Based on the evidence before the court, the Objection to the Proof

of Claim is sustained and the creditor's claim is allowed in the amount of \$3,480.20.

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 Capital One Bank (USA), N.A., 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 9 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$6,645.30.

32. [13-27180](#)-C-13 TIMOTHY/KIMBERLY NELSON
RK-9 Richard Kwun
OBJECTION TO CLAIM OF
DEPARTMENT STORES NATIONAL
BANK/MACYS, CLAIM NUMBER 4
11-1-13 [[50](#)]

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 November 1, 2013. 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(c)(1) and (d)(3). 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 9 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$6,645.30. No appearance required.

The Proof of Claim at issue, listed as claim number 9-1 on the court's official claims registry, asserts a \$6,725.19 claim. The substance of the instant Objection is virtually identical to that of Debtors' other objection to Capital One's other Proof of Claim in this bankruptcy case; Debtor objects to the Proof of Claim on the basis of discrepancy between the amounts listed on Creditor's former and present Proof of Claim.

Background

Debtors first filed for Chapter 13 Bankruptcy on December 13, 2010. In that case, Capital One ("Capital") filed a timely claim for \$8,838.50. Pursuant to Debtors' then confirmed plan, \$2,193.30 was paid on account of Capital's claim. Debtors' prior case was dismissed after the Internal Revenue Service's Motion to Dismiss was granted. The Motion to Dismiss was based on debtors not fully paying their tax liabilities in 2011 (which violated Section VI, provision 6.02(c) of their confirmed Plan) and not timely filing their 2011 post-petition federal income tax return--all of which constituted a material default under 11 U.S.C. § 1307(c)(6) and provided cause for the dismissal of their case.

As of April 12, 2013, the date Debtors' case was dismissed, Capital's claim stood at \$6,645.30, since pursuant to Debtors' first confirmed plan, \$2,193.30 had already been distributed to Capital. At the commencement of their second Chapter 13 case, filed on May 27, 2013, Capital filed a Proof of Claim for \$6,725.20, an amount that was \$79.90 dollars higher than the balance remaining in their 2010 case. Capital did not

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provide an explanation for the \$79.90 increase. Debtors assert that assuming, *arguendo*, that \$79.90 was the added interest, then the claim appreciated by 1.2% in 45 days. The annual percentage rate therefore would therefore be 9.7%, a plausible rate of interest only if it was supported with evidence from the creditor. Debtors assert that on the basis, the claim cannot be presumed valid, and either should be disallowed in its entirety or reduced to \$6,645.30.

Discussion

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

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

Here, Capital's filing is sorely lacking and does not qualify for the evidentiary benefit of Rule 3001(f). Capital's Proof of Claim, listed as Claim Number 9 on the court's official claims registrar, was filed on July 8, 2013 and does not include any documentation explaining the amount. The basis for the claim is listed as "Money Loaned," and the amount of claim is indicated as \$6,725.19. Capital checks the box on the claim form that states: "Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges."

Capital does not, however, attach any additional paperwork, explaining how it arrived at the value claimed or the loan agreement entered into between Debtors and Creditor. Thus, Capital's claim does not provide prima facie evidence of the validity and amount of the claim. Even if the claim was eligible for this presumption, Debtors have overcome their burden of proof in objecting to the disparity between the two claim amounts.

Debtors state in their declaration that they have already paid, as distributed by the Trustee, \$2,193.30 to Creditor Capital One Bank, on the same claim. In their 2010 case, the same Creditor filed a \$8,838.50 claim. The difference between the original claim, and the amount purported distributed under Debtors' old plan, would be \$6,645.30. Capital does not explain the discrepancy between this amount and the presently claimed value of \$6,725.19--it does not do so through its filed Proof of Claim documents, and it does not do so here as it has not responded to this duly noticed Objection to Claim.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained and the creditor's claim is allowed in the amount of \$3,480.20.

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 Capital One Bank (USA), N.A., 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 9 of Capital One Bank (USA), N.A. is sustained and the claim is allowed in the amount of \$6,645.30.

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, parties requesting special notice, and Office of the United States Trustee on November 4, 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). 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 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:

In this instance, Debtor's attorney should be advised to read Local Bankruptcy Rule 9014-1(f)(1) and (f)(2). Debtor's attorney commits the grave error of citing Local Bankruptcy Rule 9014-1(f)(2) in noticing Debtor's Motion to Confirm Plan, which is cause, in and of itself, to reject the Motion to Confirm Plan.

Local Bankruptcy Rule 3015-1(d)(1) requires that notice for Motions to Confirm Plan be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1); to meet the requirements of Local Bankruptcy Rule 3015-1(d)(1), the hearing must be set on the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1), and not Local Bankruptcy Rule 9014-1(f)(2). Debtor's Notice of Hearing, however, states that the Motion is being set to be heard under Local Bankruptcy Rule 9014-1(f)(2), but that "written opposition to this motion must be filed and served with the Court at least fourteen (14) calendar days preceding the date or continued date of the hearing," extracting from the language mandated by Local Bankruptcy Rule 9014-1(f)(1). This statement, coupled with the wrong Local Bankruptcy Rule, may prove confusing to potential respondents; respondents reading the rule cited may believe that they will be afforded the opportunity to appear at this hearing.

Typically, this Motion would have been denied for counsel not properly setting the motion for hearing. The court has proceeded to consider and grant the motion, however, because Debtors have provided the

requisite 42 days notice. The court will hear the Motion and entertain objections from respondents who appear at the hearing on this Motion.

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

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

The Motion 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 November 5, 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.

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

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

Procedural Posture

Debtors filed the current Motion to Confirm on July 30, 2013. Debtors case was dismissed on July 31, 2013, on the basis that Debtors Debtors had no pending plan after Debtors' Motion to Confirm was denied, the order for which was entered on August 6, 2013. Debtors filed a Motion to Vacate Dismissal and Reinstate Chapter 13 Case on August 8, 2013. Debtors also appealed the order dismissing Debtors' Chapter 13 case in the Ninth Circuit Court of Appeals, Bankruptcy Appellate Panel (Notice of Appeal, Dckt. No. 223).

At the original hearing on the Motion to Confirm Plan, the court continued the hearing on the Motion to be consistent with the court's continuance of Debtors' Motion to Vacate and Reinstate Chapter 13 Case, held on October 8, 2013 at 2:00 pm, and has continued subsequent hearings on this Motion so that it could be heard after Debtors' Motion to Vacate was resolved.

Discussion

The Chapter 13 Trustee originally opposed confirmation of Debtors plan because this case was dismissed at the hearing held on July 31, 2013, and requested that confirmation be denied on this basis.

Debtor responded to Trustee's opposition, noting that the Trustee did not object to the Fourth Amended Plan, which Debtors had filed on March 25, 2013, which was nearly identical to Debtors' Fifth Amended Plan.

Debtor acknowledged that there had been delays in achieving confirmation of their Chapter 13 plan. In the earlier stages of the case, Debtors were faced with set-backs while trying to negotiate a loan

modification and second mortgage forgiveness with Bank of America. According to Debtors, the flip flopping nature of Bank of America resulted in several amended plans and several amended income and expense schedules. As of the Fourth Amended Plan, Debtors state that all required payments to Bank of America had been established.

The Fourth Amended Plan was filed on March 25, 2013. None of Debtors secured creditors opposed the plan; however on May 21, 2013, the plan was not confirmed due to the objection of unsecured creditor Smedberg. That Motion to Confirm was denied because the court was unable to evaluate feasibility of a plan because the secured status of Smedberg was in question and because Debtors income and expense information was old and amendments made to Schedules I and J only corrected errors on the original Schedules. (Civil Minutes, Dckt. No. 194.)

On July 30, 2013, Debtors filed a Fifth Amended Plan (Dckt. No. 203) and the instant Motion to Confirm the Fifth Amended Plan (Dckt. No. 205). Debtors state it is identical to the Fourth Amended Plan, but includes an explanation of Debtors history with Bank of America, how Debtors income varied, and how a misunderstanding occurred with the Trustee, all of which required several amended plans with slightly different payments. Debtors allege that the set-backs did not prejudice creditors or delay any required payments to any secured creditor or Trustee.

Motion to Vacate Dismissal and Reinstate Chapter 13 Case

On October 31, 2013, the court granted Debtors' Motion to Vacate Dismissal and Reinstate Chapter 13 Case (Civil Minute Order, Dckt. No. 271).

Now, since Debtors' bankruptcy case has finally been reinstated, the court can consider Debtors' Plan on its merits. Debtor filed a supplemental pleading on December 7, 2013, pointing out that no opposition was filed with respect to the Motion to Confirm the Fifth Amended chapter 13 Plan, and that the unsecured creditor Smedberg did not file an opposing brief in the Ninth Circuit Court of Appeal [due no later than November 8, 2013] with respect to Debtors' appeal of the decision after Smedberg's adversary proceeding in this court. The court notes that Debtors re-noticed the Motion to Confirm to all relevant parties, including all creditors and the Chapter 13 Trustee, by advising parties that a hearing on the continued Motion would be held on this date.

Since it appears that Trustee's singular objection to confirmation of the Plan--that Debtors' case was dismissed at the hearing held on July 31, 2013--has been resolved, Debtors' Plan will thus 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 the Motion is granted, Debtors' Chapter 13 Plan filed on July 30, 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.

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

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

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

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8167 Red Elk Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$236,860.00 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 \$290,571.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$50,370.00. 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

December 17, 2013 at 2:00 p.m.

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Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a deed of trust recorded against the real property commonly known as 8167 Red Elk Drive, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$236,860.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 3, 2013. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7940 Sylvan Oak Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$239,398.00 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 \$247,488.00. Creditor Wells Fargo Financial California, Inc.'s second deed of trust secures a loan with a balance of approximately \$30,107.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Financial California, Inc. secured by a second deed of trust recorded against the real property commonly known as 7940 Sylvan Oak Way, Citrus Heights, 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 \$239,398.00 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 22, 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 at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the Amended Plan. Trustee opposes on the basis that the Plan is not Debtor's best effort under 11 U.S.C. § 1325(b), as Debtor is under the median income and proposes plan payments of \$9,000 for 60 months, with a 1% dividend to unsecured creditors, which totals \$229.00 to unsecured creditors.

Debtor listed a \$1,500.00 rent expense on Schedule J, filed on July 8, 2013, and an amended Schedule J filed on August 19, 2013. Debtor admitted at the First Meeting of Creditors, held on August 15, 2013, that the \$1,500 was not used for rent, but instead was being used to help Debtor's mother for her household expenses and insurance. Trustee is not certain of Debtor's living situation, and believes the Plan is not Debtor's best effort unless sufficient evidence is provided.

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

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

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

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

good cause appearing,

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

38. [13-31599](#)-C-13 TONY MILO CONTINUED MOTION TO VALUE
NBC-1 Eamonn Foster COLLATERAL OF FORD MOTOR CREDIT
9-4-13 [[8](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor 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 Continued Motion to Value Collateral will be set 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:

Prior Hearing, on October 8, 2013

This Motion to Value the Collateral of Ford Motor Credit Company was continued from October 8, 2013. The court's prior decision on this matter was to set the Motion to Value for an evidentiary hearing, as Debtor and Creditor had presented opposing opinions of value, neither of which were based upon verified appraisals. The value of the vehicle is a material fact over which there is a genuine dispute, and thus the court set an evidentiary hearing on [date] at [time] to resolve the valuation question on November 22, 2013, in front of the Honorable David E. Russell.

The motion was accompanied by the Debtor's declaration. The Debtor is the owner of a 2006 Ford F-150 XL. The Debtor sought to value the property at a replacement value of \$9,085.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, with a balance of approximately \$11,567.75.

Ford Motor Credit's Opposition

In response to Debtor's Motion to Value, Creditor, Ford Motor Credit Company, disputed Debtor's opinion of value. Creditor relied on NADA Guidelines for valuation and assets that the proper value of the vehicle, for purposes of 11 U.S.C. § 506(a), is \$12,875.00. Creditor contended that the balance owed by Debtor is \$12,069.81.

Debtor's Reply

Debtor replied to Creditor's opposition, arguing that Creditor's valuation method did not consider the age and condition of the vehicle at the time it was value. 11 U.S.C. § 506(a). Debtor asserted the vehicle is not in excellent condition. Debtor continues to cite various deficiencies with the vehicle.

Outcome of Prior Hearing

It appears that Debtor and Creditor stipulated to removing the evidentiary hearing, and that Debtor's Motion to Value was instead continued to this hearing date; this stipulation was approved by an order of the court signed on November 14, 2013. In preparation for the evidentiary hearing, however, Debtors filed the Declaration of Johannes Jansen in support of the Motion to Value Collateral of Motor Ford Credit, while Creditor filed the Declaration of Theresa Edson in opposition to the Motion to Value.

Declaration of Johannes Jansen (Dckt. No. 52) and Creditor's Opposition

Debtor offers the declaration of Johannes Jansen, who states that he has been a licensed vehicle salesperson for the past 26 years. His license number is 23747 and states that he is in good standing. Jansen is currently employed at Main Street Auto Sales, located at 449 Main Street, Red Bluff, California. The auto dealership specializes in, and his duties include, both buying and selling vehicles for retail in the Red Bluff auto market.

Jansen states that on October 16, 2013, Debtor presented to Jansen his 2006 Ford F-150, which Jansen examined "both inside and out." Based on his inspection, and the age and current condition of the vehicle, and the local market, Jansen believes that the retail value of the property is no less than \$9000.00, based on the assumption that if he were to place this vehicle on the lot for sale, Jansen would list the vehicle in "As-Is" condition and would sell it for that amount.

Reply of Creditor

Creditor filed a reply to this declaration on November 27, 2013 (Dckt. No. 71), opposing the declaration on the basis that there is no evidence attached in support of the valuation, and no appraisal of the vehicle attached to show how Jansen values the vehicle at \$9,000. Furthermore, Creditor asserts, the Declaration does not provide the underlying facts and data upon which the appraisal is based (guide book valuations, documentary evidence, etc.). Creditor also questions the valuation by raising the question as to whether Jansen as a salesperson, is qualified to determine the retail value of the vehicle, which is what a retail merchant would charge, and not sell, for the vehicle (which Creditor states is the incorrect replacement value standard for the vehicle), or if he must defer to another employee in the dealership to make that decision. Creditor also challenges the declaration because it makes no mention of the

"current condition" of the vehicle, and evidence of how the vehicle would be priced in the local market. Creditor asserts that its appraisal is more persuasive as to the retail value of the vehicle.

Debtor's Response to Creditor's Reply to Declaration of Jansen

Debtor responds by point out that he has submitted two listings of comparable vehicles, with their corresponding NADA valuations. Both listings are comparable to Debtor's vehicle and come from the same dealership where Jansen is employed. Furthermore, at the time these listings were obtained, they were the only comparable vehicles in the Red Bluff area with online listings.

Declaration of Theresa Edson (Dckt. No. 54)

Declarant Theresa Edson states that she is a motor vehicle appraiser employed by Property Damage Appraisers of Chico, California. She has been in the business of appraising used motor vehicles for 12 years, and has "specialized in the inspection and valuation of used motor vehicles on a full time basis over that period of time." Declaration of Theresa Edson, ¶ 2. Edson states that she inspected the subject vehicle on October 22, 2013, at Debtor's workplace, and attaches a true and correct copy of the Condition Report with supporting documents as Exhibit A to her declaration.

Edson states that she would categorize the vehicle as in "GOOD" condition. Her observations and comments with respect to the Vehicle's condition are noted in the "remarks" section of the Condition Report, and verified that the mileage on the Vehicle at the time of inspection was 53,075 miles. Based upon her inspection of the vehicle, she estimates the repair work needed on the vehicle is approximately \$588.26. After her inspection of the vehicle, she found three vehicles similar to the subject vehicle in local dealer inventories by accessing the AutoTrader.com website. The three dealer quotes are attached to the Condition Report. The average of the three comparable quotes is \$14,575. In addition, she reviewed the N.A.D.A. California Region retail value for the vehicle; the suggested retail value for the vehicle with mileage adjustment is \$14,575.00. Based on her analysis of comparable vehicles and N.A.D.A. valuation, it is Edon's opinion that a retail merchant would charge, considering the age and condition of the vehicle and without deduction for costs and sale of marketing, at \$14,575.00.

Discussion

Although it appears that Debtor and Creditor entered into an earlier situation removing the November 22, 2013 evidentiary hearing from the court's calendar, Debtor and Creditor still do not agree on the subject vehicle's value.

Local Bankruptcy Rule 9014-1(g) states that:

If the Court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied, testimony should be taken in accordance with Fed. R. Civ. P. 43(a) unless the parties waive such right or consent to proceeding under Fed. R. Civ. P. 43(c).

A disputed material factual issue remains to be resolved in this

case; pursuant to Local Bankruptcy Rule 9014-1(g), the court is required to set this matter for an evidentiary hearing. Debtor and Creditor will be afforded the opportunity to present their valuations and the credentials of their appraisers to the court at that time.

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

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

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

IT IS ORDERED that an evidentiary hearing on the Motion to Value shall be conducted at **[time]** on **[date]**.

Local Rule 9014-1(f)(3) 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 December 10, 2013.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, 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. 12-38157) was filed on October 11, 2012 and dismissed on October 21, 2013. Debtors' current case was filed December 9, 2013. 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.

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 a previous case was pending and dismissed within a 1-year period from the filing of the current case, after the Debtor failed to file documents as required by the court or perform the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa)&(cc).

Here, the presumption of bad faith arises. Debtors' previous case was pending within the year preceding the filing of the current case and was dismissed because Debtors did not cure default under the terms of a confirmed plan, did not file a written objection and request a hearing, did not perform on a pending modified plan, and did not file a motion to modify their plan. Civil Minutes, Dkt. 59, Case No. 12-38157. 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 the instant case was filed in good faith in order to protect Debtors' vehicles. In the Motion, Debtors explain that there is monthly net income of \$3,132.94, consisting of Debtor net income from employment at MV Transportation of \$2,757.94 and \$375.00 additional monthly income from a multi-level marketing program. Debtors' Schedule I and B22C reflect that Debtors earn sufficient income to cover necessary expenses and a proposed plan payment. Debtors' expenses are \$2,507.49, leaving \$625.00 for monthly plan payments.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The motion is granted and the automatic stay is extended for all purposes, 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 for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Extend the Automatic Stay is granted.

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 and the Office of the United States Trustee on November 25, 2013. 14 days' notice is required. That requirement was met.

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

Prior Hearing

The court first heard Debtor's Motion to Incur Debt on December 10, 2013. At that time, the court continued the hearing on the matter to December 17, 2013 to permit Debtor to file supplemental materials.

The court was confused by Debtor's request to incur debt because Debtor did not file sufficient supporting documents and had previously received permission to incur debt. It was not clear to the court whether this current request was an extension of credit under the approved agreement or a new credit agreement.

Motion & Supplemental Materials

Movant, Debtor Robert Contreras ("Debtor"), seeks permission to purchase real property commonly known as 13285 Cabral Circle, Galt, California, for the total purchase price of \$409,135.00. Debtor thereby requests permission from the court to incur a debt up to \$410,00.00.

Debtor previously received court approval to incur debt in an amount up to \$375,000.00; however, Debtor was recently bank approved for a higher amount and is now seeking court approval for a new extension of credit.

A motion to incur debt is governed by Fed. R. Bankr. P. 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa 2009).

Rule 4001() requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FRBP 4001()(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* At 4001()(1)(A).

The following terms are provided in Debtors' Motion:

1. Maximum amount of the loan is \$410,000.00.
2. The loan term is 30 years at 3.75% interest rate.
3. Monthly payment is approximately \$2,361.00 and includes insurance and taxes.
4. Debtor filed amended Schedules I & J based on a recent pay raise and the amended documents reflect Debtor's ability to afford the loan payment and continue making his plan payment of \$550.00 per month.
5. The Note and Deed of Trust with Mortgagee, CMG Mortgage, Inc. are attached as Exhibits A & B in Debtor's supplemental documents (Dkt. 67).

Chapter 13 Trustee filed a statement of non-opposition.

Taking into consideration the supplemental materials filed by Debtor and the Trustee's non-opposition, the court is satisfied that Debtors met the burden of FRBP 4001(c) and will grant the motion to incur debt.

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

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

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

IT IS ORDERED that the Motion to
Incur Debt is granted.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 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:

Prior Hearing

The court held a prior hearing on Debtor's Motion to Value on December 10, 2013. The hearing on the matter was continued to December 17, 2013 because Debtor's counsel was medically unavailable.

Discussion

Trustee opposes confirmation of Debtor's Motion to Confirm the Amended Plan, based on Trustee's uncertainty as to whether Debtor can afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value Collateral of Ford Motor Credit, which is set for hearing on December 17, 2013.

The court did not resolve the pending Motion to Value, but intends on setting it for an Evidentiary Hearing. Therefore, the court's decision is to continue the Motion to Confirm to the same date as the evidentiary hearing so it may be determined after the Motion to Value is decided.

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,

December 17, 2013 at 2:00 p.m.

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on Debtor's Motion to Confirm the Plan be continued to **[date]** at **[time]**, to be heard in after the evidentiary hearing on the Motion to Value Collateral of Ford Motor Credit, NBC-1.