UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 21, 2015 at 3:00 p.m.

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1. 10-32500-E-13 RICARDO/BEATRICE RANGEL — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
MC-5 Muoi Chea — 7-6-15 [94]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Value secured claim of JPMorgan Chase Bank, N.A., as successor-in-interest to Washington Mutual Bank, F.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Ricardo C. Rangel and Beatrice M. Rangel ("Debtors") to value the secured claim of JPMorgan Chase Bank, N.A., as successor-in-interest to Washington Mutual Bank, F.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7512 Muirfield Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $85,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 16 filed by Real Time Resolutions, the mortgage servicer for JP Morgan Chase Bank, N.A., as successor-in-interest to Washington Mutual Bank, F.A., is the claim which may be the subject of the present Motion.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $116,306.00. Creditor's second deed of trust secures a claim with a balance of approximately $75,603.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ricardo C. Rangel and Beatrice M. Rangel ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A., as successor-in-interest to Washington Mutual Bank, F.A., secured by a second in priority deed of trust recorded against the real property commonly known as 7512 Muirfield Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $85,000.00 and is encumbered by senior liens securing claims in the amount of $116,306.00 which exceed the value of the Property which is subject to Creditor's lien.

2. 15-23902-E-13 JOHN/MELISSA RUS
CLH-1 Cindy Lee Hill

MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION SERVICES, INC.
6-16-15 [14]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Waldorf Schools ("Creditor") against property of John and Melissa Rus("Debtor") commonly known as 6300 Whitecliff Way, North Highlands, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $45,002.13. An abstract of judgment was recorded with Sacramento County on April 17, 2014, which encumbers the Property. FN. 1.

FN.1. The court notes that Debtor initially provided the court with an index of recorded documents, rather than a copy of an Abstract Judgment. *See* Dckt. 17, Exhibit B. The index of recorded documents provides details of the judgment, including the book number, and page number. However, the index of recorded judgments shall not serve as a substitute for the required Abstract Judgment. However, the Debtor here subsequently submitted an Abstract of Judgment on July 9, 2015, seeking to have the court take "judicial notice" of the lien. This is questionable, as the Federal Rules of Evidence provide for documents to be authenticated in various ways - through the testimony of someone with personal knowledge and certification. Here, a document appears, with no one saying where it came from and not being certified.

NO EXEMPTION CLAIMED

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $144,000.00 as of the date of the petition. The unavoidable consensual liens total $174,137.00 as of the commencement of this case are stated on Debtor's Schedule D. However, Debtor's Schedule C reflects a claimed exemption of $0.00 under Cal. Civ. Proc. Code § 703.140(b)(1). Schedule C, Dckt. 1. Because Debtor has not claimed any value under the exemption, the fixing of this judicial lien does not impair the Debtor's exemption. Therefore, the Motion is denied without prejudice.

JUDGMENT CREDITOR NOT NAMED IN MOTION

The Motion seeks to have the court avoid the judgment lien of Waldorf Schools. It states that the lien is asserted by Northern California Collection agency for Waldorf Schools as its agent.

On its face, the Judgment Lien for which the court is requested to take judicial notice states that ***the judgment creditor is Northern California Collection Service, Inc.*** Exhibit "Unnumbered", Dckt. 25; see paragraph 6 of the Abstract of Judgment, paragraph 1, and caption of Abstract of Judgment. The Abstract of Judgment, issued by the California Superior Court does not identify the judgment creditor as Waldorf School or that Northern California Collection Service is merely the "agent" for Waldorf School.

The Motion does not seek to have the court avoid the judicial lien of Northern California Collection Service, but of Waldorf School, who based upon the unauthenticated evidence presented by Debtor is not the judgment creditor. If the court were to grant the relief requested, Debtor (and Debtor's counsel) would have the unfortunate realization years down the road at the time of sale or refinancing the property that the judgment lien of Northern California Collection Service remained in full force and effect, the Debtor continuing to owe the judgment and the continual accruing of 10% per annum interest.

The court will not "stretch" the pleadings to convert Northern California Collection Service, Inc., which is clearly identified only as the agent of creditor Waldorf Schools, by re-writing the Motion into one in which Northern California Collection Service, Inc. becomes a named "party" against who relief is personally being sought.

In his declaration, Debtor John Rus states under penalty of perjury

that Debtor was sued by ***Northern California Collection Service***. Declaration ¶ 1, Dckt. 16. He further states that having been sued by Northern California Collection Service, a judgment was entered against Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien of Waldorf Schools is denied without prejudice.

3. 15-23902-E-13 JOHN/MELISSA RUS
DPC-1 Cindy Lee Hill
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-23-15 [20]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 23, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the pending plan relies on the Motion to Avoid Lien of Waldorf School/Northern California Collection Services, Inc. The Motion to Avoid Lien is set for hearing on July 21, 2015 at 3:00 p.m.

On July 21, 2015, the court denied without prejudice the Motion to Avoid Lien.

The Trustee's objections are well-taken. The Plan relies on the Motion to Avoid Lien which has been denied due to the Debtor failing to show that the lien impairs an exemption claimed by the Debtor. Therefore, the Plan does not

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

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

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

4. 15-25102-E-13 LARRY/ROSEMARY CALKINS MOTION TO EXTEND AUTOMATIC STAY
CAH-1 C. Anthony Hughes 7-2-15 [19]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Larry and Rosemary Calkins ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 2015-24138) was dismissed on June 9, 2015, after Debtors failed to timely file all necessary documents. *See* Order, Bankr. E.D. Cal. No. 2015-24138, Dckt. 11, June 9, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The

subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtors state that the instant case was filed in good faith and provide an explanation for why the previous case was dismissed, as one of the Debtors was previously undergoing chemotherapy while trying to file in *pro se*. Debtors have since retained counsel to advise them and help them prepare their documents. FN.1.

FN.1. The court notes that this is not the Debtor's first, second, or even third recent bankruptcy filing Debtor.

Current Case 15-25102 Chapter 13 Represented by Counsel	Filed: June 25, 2015 Dismissed: Pending
First Prior Case 15-24183 Chapter 13 Pro Se	Filed: May 22, 2015 Dismissed: June 9, 2015
Second Prior Case 12-25416 Chapter 13 Represented by Counsel	Filed March 20, 2012 Dismissed: November 23, 2013
Third Prior Case 11-48675 Chapter 13 Pro Se	Filed: December 12, 2011 Dismissed: February 24, 2012

Debtor and counsel may want to visit what Debtor can do to successfully prosecute this Chapter 13 case and obtain the benefit of the discharge rather than cycling in and out of bankruptcy cases.

The Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5. 10-44204-E-13 DPC-2 | IRMA SANCHEZ
Michael O'Dowd Hays | **CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS**
1-21-15 [58]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is $782.00 delinquent in plan payments, which represents multiple months of the $391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Irma Sanchez ("Debtor") filed a reply to the instant Motion on February 3, 2015. Dckt.62. Debtor replies as follows:

Debtor's confirmed Chapter 13 plan called for monthly payments of $391.00 for 60 months to pay the $9,625.00 value portion of the $18,863.00

claim of National Auto Finance and 1% of her unsecured claims which were estimated to total $56,619.00. The $9,625.00 claim is being paid with 6% interest with a monthly dividend of $186.00 and a total of $11,16000 would have been paid at $186.00 monthly. The Debtor's plan also calls for payment of $2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to $11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor. Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of $14,752.38 which is in excess of the $11,160.00 called for in the plan. No explanation has been provided for this overdisbursement to the car creditor and apparent underdisbursement to the creditors holding general unsecured claims.

Debtor asserts that it should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of $391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.

2. Debtor is currently delinquent in the amount of $1,173.00.

3. January was month 52. A total of $20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of $19,159.00 with last payment of $391.00 on November 13, 2014.

4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.

5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to allow counsel to meet with his client and determine whether it is in the Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to allow the Debtor to file a proposed modified plan. Dckt. 86.

JUNE 24, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm.

JUNE 30, 2015 HEARING

At the hearing, the court further continued this matter due to deficiencies in the pleadings in the related motion by which Debtor seeks to remedy the default.

Since the continuance, no supplemental papers have been filed in connection to this Motion nor any other.

DISCUSSION

A review of the case shows that the Debtor remains delinquent. The Debtor is, at a minimum, $1,173.00 delinquent in plan payments, which represents multiple months of the $391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has been offered numerous continuances to either cure the delinquencies or to: (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code. Yet, the Debtor has failed to successfully pursue any of these options.

The court will not continue to permit the Debtor time to correct errors caused by her own delinquency when the Debtor is not making a good faith effort to prosecute her case. The Debtor has reached the end of her first, second, third, fourth, and fifth "second chance."

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

6. 10-44204-E-13 MOH-6 | **IRMA SANCHEZ** / **Michael O'Dowd Hays** | **CONTINUED MOTION TO MODIFY PLAN AND/OR MOTION FOR ENTRY OF DISCHARGE** **5-19-15 [91]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Irma Sanchez ("Debtor") filed the instant Motion to Modify Chapter 13 Plan , Conclude Case, and Grant Discharge on May 19, 2015. Dckt. 91. The Debtor is seeking for the court to confirm the proposed plan, conclude her case with $19,159.00 being paid in and that the Debtor be granted discharge.

In the Motion, the Debtor provides a lengthy narrative of recent developments, including health problems, loss of job, moving to more affordable housing, and gaining employment at a lesser salary.

The Debtor states that she was in a 60 month plan, even though she qualified for a 36 month plan, so that the Debtor could pay the $9,624.00 value portion of the car claim, plus 6% interest and no less than 1% dividend to the unsecured creditors, plus the Trustee's and her attorney's compensation. The Debtor asserts that the obligation has been satisfied in less than 60 months because the amount of unsecured claims actually filed came to $11,579.25 instead of the original estimate of $56,619.00.

The Debtor argues that because she has satisfied her original commitment to her creditors in less time, was not legally required to be in a 60 month plan, and due to decrease in income, the Debtor is requesting to have her case concluded with the $19,159.00 already paid in with no further payments required.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 97. The Trustee argues that the Motion does not comply with applicable law because it is requesting multiple forms of relief. Additionally, the Trustee notes that the Debtor's Motion does not cite any applicable code sections, in violation of Local Bankr. R. 9014-1(d) and Fed. R. Bankr. P. 9013.

JUNE 30, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on July 21, 2015. Dckt. 105. The court ordered that the Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee a points and authorities directing the court to the applicable law and relief provided for under the Bankruptcy Code, and providing cogent, organized arguments why the evidence in this Contested Matter supports granting such relief.

DISCUSSION

The court begins its analysis with the basic pleading issues identified by the court.

Failure to Comply with Fed. R. Bankr. P. 9013

At this court has repeatedly discussed, Federal Rule of Civil Procedure 7(b) and Federal Rules of Bankruptcy Procedure 7007 and 9013 require that a

motion state with particularity both the grounds upon which the relief is based and the relief itself. In the fast-paced world of the bankruptcy law and motion calendar (in which most substantive law matters upon which a party's rights are determined, terminated, or modified) with fourteen to forty-two days notice, clear, accurate, and complete pleading in the motion is a necessity.

The Motion, Dckt. 91, now before the court states (as distilled by the court) the following grounds and relief with particularity: FN.1.

a. Debtor is a below median income Debtor, with an applicable commitment period of three years. Motion ¶ 1.

b. Under the existing confirmed plan Debtor is obligated to make payments of $9,625.00 for 60 months. Motion ¶ 1

c. Under the plan the Debtor was to surrender her residence and projected her ongoing rent to be $1,000.00. Motion ¶ 1

d. In 2013 Debtor began suffering from health issues which required surgery and prevented her from being employed. Debtor's disability benefits were $2,343.60 a month. Motion ¶ 2. FN.2. This is about $1,000 a month less than the Average Monthly Income show on Schedule I which Debtor stated on Schedule I.

e. When Debtor returned to work her employer laid her off in March 2014, allegedly due to "lack of work" and that a "full time employee [was] no longer required." Motion ¶ 3.

f. Debtor's unemployment benefits were approximately $1,680 a month. Motion ¶ 4.

g. In April or May 2014 Debtor obtained new employment, earning income in an unstated amount. Motion ¶ 4.

h. Debtor's employment income is now "quite a bit lower" than her former employment. Motion ¶ 5.

i. Her earning shown on the April 24, 2015 statement are $12,527.62 for the year to date, which average $3,132 monthly. Motion ¶ 5.

j. Debtor cannot explain the amounts for the deductions by her employer from her gross earnings. Motion ¶ 5. In projecting her current income, Debtor has used the lower deduction amounts shown on her pay statements. Motion ¶ 5.

k. While her income has been reduced by around $800 a month, so have her expenses, as she only has one child residing with her. Motion ¶ 6.

l. Debtor remains separated from her husband, and in the past twelve months he has provided only $2,000.00 in spousal and child support. Motion ¶ 7.

m. Debtor originally confirmed a 60 month plan in order to have an affordable payment, based on her income and expenses, to pay the $9,625 secured claim (car loan) and a minimal 1% divided to creditors with unsecured claims. Motion ¶ 8.

n. Debtor has been able to pay the secured claim in full and the 1% minimum dividend has been paid because the general unsecured claims filed in this case were only $11,579.35, much lower than the $56,619.00 Debtor projected in her plan. Motion ¶ 8.

o. Debtor has paid $19,159.00 into the Plan. This is alleged to have fund the plan in full (because of the much lower general unsecured claims) without the payments having to be made over the full 60 months originally required. Motion ¶ 9.

p. Therefore, the relief requested is that:

i. The bankruptcy case not be dismissed (which is not the subject of the present Motion);

ii. The bankruptcy case be concluded with the $19,159.00 paid into the plan by Debtor (which is relief that the court cannot identify to any specific Bankruptcy Code sections); and

iii. Debtor be granted a discharge (which is something separate from the court addressing whether a plan has been completed).

Motion unnumbered, untitled paragraph after paragraph 9.

FN.1. The court notes that some of the confusion over the present Motion appears to arise because rather than stating with particularity the grounds upon which modification of the plan is proper (stating the grounds as required by 11 U.S.C. §§ 1329, 1325, and 1322), the motion is drafted in a manner in which long paragraphs argue multiple factual issues. Also, rather than stating grounds, the Motion contains arguments, which properly should be in the points and authorities in the context of legal authorities upon which the relief is based.

FN.2. Debtor states in the Motion that the benefits were $558.00 a week, which the court has extended to a monthly amount by multiplying the weekly amount of $2,343.60.

No Points and Authorities has been filed with the Motion. This leads to further confusion about what relief is being requested, as well as what grounds exist under applicable law for the relief requested. While the motion is titled (which is not part of the pleadings) “Motion to Modify,” no such relief is requested in the Motion. While one might “assume” that such can be inferred from the Motion, to do so requires the court to redraft the pleading for Debtor.

As the Trustee notes in his opposition, while the court or Trustee could assume, or state for the Debtor, the proper law, such is not the duty of either. As the court has phrased it in other unrelated cases, it is not the role of the court to advocate for parties in federal judicial proceedings, but rule on the matters presented to the court. It is inappropriate for a party to assign legal work to the court, such as in the present case, to advance relief for a party in the way the court best thinks it allows that party to prevail over other parties to the litigation.

Debtor may respond, "hey judge, I've regurgitated a bunch of really good sounding facts, you pick through it and find the parts you think sound the best, then assemble the law for me, and grant me the relief you advocate for me." This highlights the deficiency in the pleading strategy of Debtor – wanting to turn the court into one of Debtor's legal team. It appears that Debtor does not know why or how relief should be granted, and thinks that it should not be Debtor's counsel's duty to provide such services for Debtor.

No supplemental papers have been filed in connection with this matter since the continued hearing.

Much like the Debtor's numerous opportunities to cure the delinquencies or to propose a viable modified plan, the Debtor has failed to take advantage of the court's continuances. Instead, the Debtor has filed no supplemental papers to represent a good faith effort to prosecute this faith. The court, as discussed supra, is unable to determine what relief exactly the Debtor is seeking in the Motion which appears to ask for multiple forms of relief that are inherently incompatible. The Debtor has decided not to take the continuance granted by the court to evaluate her finances and propose a feasible plan or grounds for a hardship discharge.

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.

7. 14-29505-E-13 JOHN/CAROLIN FUNDERBURG MOTION TO MODIFY PLAN
DJC-1 Diana J. Cavanaugh 6-12-15 [21]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. 13-32506-E-13 RJ-5 RICHARD EADDY Richard L. Jare

MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTOR'S ATTORNEY(S)
7-1-15 [82]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, United States Attorney, United States Department of Justice, and Office of the United States Trustee on July 1, 2015. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.) The court shortens the notice period to 20 days under the circumstances surrounding the present Motion.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing **----------**.

The Motion for Allowance of Professional Fees is granted.

Richard Jare, the Attorney ("Applicant") for Richard E. Eaddy the Chapter 13 Debtor ("Client"), makes a Request for Additional Attorney Fees in this case.

The period for which the fees are requested is for the period March 14, 2015 through May 19, 2015. Applicant requests fees in the amount of $2,400.00.

TRUSTEE'S OBJECTION

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 9, 2015. Dckt. 88. The Trustee objects on the grounds that Applicant previously filed a Motion Requesting Additional Attorney Fees on May 19, 2015, which was denied by this court at the hearing on June 9, 2015. *See* Dckt. 79, 81. Denial of the Applicants Motion was premised on his failure to provide the required task-billing. Trustee notes that while Applicant's present Motion include the required task-billing, it is illegible.

FAILURE TO PROVIDE SUFFICIENT NOTICE

Unfortunately, the Applicant only provided 20 days notice on the instant Motion. Pursuant to Fed. R. Bankr. P. 2002(a)(6), 21 days notice is required for a Motion for Allowance of Professional Fees. This is sufficient grounds to deny the Motion.

FAILURE TO PROVIDE LEGIBLE TASK BILLING

A review of the attached task billing supports the Trustee's response that the task billing is illegible. Looking at the attached time sheets, the Applicant provides a "task billing" that has partially cut off sentences, incoherent hourly statements, and has an increased request of $400.00 that the Applicant does not provide explanation.

As noted by the Trustee, this is the Applicant's second attempt at a request for additional unanticipated and substantial fees. However, the Applicant has provided what appears as generic "categories" on the far left margin with incomplete description of each entry. The court, like it noted at the Applicant's first attempt, will not perform the duties of an associate and compile the Applicant's task billing.

Furthermore, a review of the Motion shows that the Applicant has not provided any explanation or justification as to how and why the alleged services were substantial and unanticipated to justify nearly double the amount of the "no look" fees. While the Applicant speaks in generalities as to certain additional motions that were necessary due to missed payments and other circumstances, the Applicant does not divide his billing into the tasks for those. As implicit in the term "task billing," especially in the context of substantial and unanticipated fees, the Applicant should outline, specifically, each individual additional services, why they were substantial and unanticipated, and the time spent. The Applicant once again fails to provide the court with specific, accurate, and legible billing in order to determine if the Applicant is entitled to any additional fees.

The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green,

adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

REVIEW OF PRESENT APPLICATION

The current Motion states with particularity (as summarized by the court) the following grounds (Fed. R. Bankr. P. 9013) in support of the requested relief:

A. Applicant has served as the Debtor's attorney since the commencement of this case.

B. Applicant and Debtor agreed to provide for a "no-look fee" of $2,500 for Applicant in this case pursuant to Local Bankruptcy Rule 2016(c).

C. The court has approved the $2,500 fee for the legal services provided by Applicant in this case.

D. The Debtor has confirmed the Chapter 13 Plan in this case.

E. Time Sheets are filed as Exhibit A for the legal fees and expenses of Applicant which are being requested in addition to the $2,500 fee previously approved by the court.

F. The additional fees are stated to be for "substantial and unanticipated" legal services provided to Debtor.

G. The services which are included in the $2,500 fee are also listed on the Time Sheets filed as Exhibit A.

H. The services asserted to be for substantial and unanticipated legal services are stated to be:

1. "Missed plan payments;"

2. "Missed Class 4 payments on the Note Secured by a Deed of Trust against the residence."

3. "Approval of the sale of the residence owned by the debtor;"

4. "Modification of the plan in conjunction with the sale of the residence."

5. Applicant expended 17.6 hours of time providing these substantial and unanticipated legal services, which are billed at $250 an hour, for fees which total $4,400.00.

6. Applicant agrees to reduce the fees to $2,400 so that "there should not be any payment shortfall with the plan base.

7. Applicant waives any additional expenses relating to the substantial and unanticipated legal services.

8. Applicant does not seek compensation for the Motion to Avoid Lien, which could have been anticipated.

9. No fees are requested for any paralegal or other services.

Motion, Dckt. 82.

On its face, the Motion does not provide a simple task billing analysis. Such could be (the numbers, hours, and description are merely hypothetical examples and not based on the facts of this Motion):

I. Motion to Modify Plan.....5.0 hours @ 250/hour = $1,240.00.

II. Includes correspondence, communication with creditor, pleadings, and hearing. Richard Jare....5.0 hours.

III. Motion to Sell Property.....4.0 hours @ $250/hour = $1,000.00.

A. Includes correspondence, communications with creditor and title company, motion, supporting pleadings, hearing, and close of escrow communications. Richard Jare.....4.0 hours.

IV. Debtor's Default, Consideration of Options.....3 hours @$250/hour = $750.00.

A. Includes correspondence, communications with Debtor, creditor and Chapter 13 Trustee, and review of current financial records. Richard Jare.....3.0 hours.

No such simple task billing analysis is provided in the Motion.

Applicant provides his two page declaration in support of the Motion. Dckt. 84. His declaration authenticates Exhibit A. He does not provide a simple task billing analysis in his declaration.

Exhibit A is Applicants gross billing time sheet, organized chronologically, from September 25, 2013, for the first word done in this case, through May 19, 2015, for services in drafting the proposed order modifying the plan. The billings for this twenty-one month period commingles the services for which the court has already approved $2,500 in fees with the services for which Applicant wants an additional $2,400. As the Trustee notes, the column of the Time Sheets in which the services are described has been partially obscured, making a portion of the description unreadable (or just hidden).

The Time Sheet does not provide a task billing, but (presumably unintentionally) confuses the additional services, which should be the only ones being described, with the ones for which Applicant has already been allowed fees. The various services are strewn over this twenty-one month period with no organization by task.

The court has already denied, without prejudice, the prior motion for fees. Applicant has either intentionally, or due to lack of experience or willingness to learn from other attorneys who regularly seek additional fees from the court (or attorneys who represent trustees and debtors in possession) how to properly (or at all) provide a task billing analysis. The court expressly stated at the hearing on the prior motion that Applicant should contact other consumer or trustee attorneys to discuss how to properly prepare such an applicant. The court even identified several such attorneys in Sacramento and Modesto by name.

Though warranted, denying Applicant the fees, *this time*, is not warranted. Counsel regularly appears in this court, is respectful, works to properly advance his clients cases, and comply with the Bankruptcy Code and Rules. His failure to provide the task billing analysis and billing records for only the additional fees appears to be due to a gross miscommunication or misunderstanding on his part.

For the services provided, an additional $2,400.00 is not unreasonable. Applicant is willing to reduce his fees (and while the Trustee questions why the reduction this time is $400 less than the prior application, the current amount is not unreasonable).

The court will not misrepresent to the Trustee, U.S. Trustee, or Applicant that the court has conducted a line by line analysis of the services provided, reorganized the Time Sheets into a proper additional fee statement, nor prepared for Applicant a simple, well thought out task billing analysis. The court, with years of experience as an attorney and having now ruled on other attorney fee application, makes a gross determination that $2,400.00 is not unreasonable.

Though awarded the fees in this case, Applicant should not believe that he has bullied the court into accepting whatever “junk pleadings” and “junk exhibits” that he throws into the right – the court being beaten into submission. The court will look closely at Applicants legal work in this case and other cases to consider whether, as the court is willing to presume, this error by Applicant is an aberration, as opposed to a “damn it judge, you are going to take my pleadings like I tell you and give me the orders I demand.” If these defects reoccur, Applicant may well find his motions denied with prejudice and not be given a second and third chance. Applicant may find that the court determines his hourly rate for the value of his services is significantly less than $250.00.

While the court will not order it, Applicant will be well served to take other attorneys who regularly request and are granted their fee applications – whether for substantial and unanticipated work in a Chapter 13 case or seeking the allowance of fees as provided in 11 U.S.C. §§ 330 and 331.

The Motion is granted and Richard Jare is allowed $2,400.00 of legal fees for substantial and unanticipated legal services, in addition to the $2,500.00 set fee allowed by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Richard Jare ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Richard Jare, counsel for Debtor is allowed $2,400.00 attorneys fees pursuant to Local Bankruptcy Rule Rule 2016(c) for substantial and unanticipated legal Rule 2016(c). These amounts are in addition to the fees allowed by the order confirming the plan in this case. The Chapter 13 Trustee shall pay these additional fees as provided in the confirmed Chapter 13 Plan.

9. 15-21707-E-13 RS-1 | **JUDITH LAYUGAN** Richard L. Sturdevant | **MOTION TO CONFIRM THAT SHORT SALE DISCUSSION WILL NOT VIOLATE STAY** **6-25-15 [41]**

Tentative Ruling: The Motion to Confirm that Short Sale Discussion Will Not Violate Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Confirm that Short Sale Discussion Will Not Violate Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Confirm that Short Sale Discussion Will Not Violate Stay is denied.

Judith Layugan ("Debtor") filed the instant Motion to Confirm that Short Sale Discussion Will Not Violate Stay on June 25, 2015. Dckt. 41. The Debtor requests that the court authorize Bank of America, N.A., its successors in interest, its servicer, its beneficiaries, its and their attorneys or any connection thereof ("Bank of America") and Bank of New York Mellon its successors in interest, its servicer, its beneficiaries, its and their attorneys or any connection thereof ("Bank of New York Mellon") to establish contact and otherwise communicate with Debtor regarding the Debtor's loan to explore a short sale.

The Debtor states that Bank of America holds a first deed of trust and the Bank of New York Mellon holds a second deed of trust on the Debtor's residence commonly known as 8864 La Riviera Drive, #D, Sacramento, California (the "Property").

The Debtor is requesting that the court issue an order confirming that a short sale discussion will not violate the automatic stay.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on July 2, 2015.

The Debtor is essentially requesting that the court issue a "comfort order" so that the parties can discuss the possibility of short selling the Property rather than potentially facing foreclosure. In asking for a "comfort order," the Debtor is stating that no order is required, but "it would be nice to have one." The Debtor does not cite any provisions of 11 U.S.C. § 362 that prevents the Debtor, Debtor's counsel, and other parties from discussing the option of short sale. Instead, the Debtor gives a synopsis of the current encumbrances on the Property and that she wishes to discuss other options with Bank of America and Bank of New York Mellon.'

The motion goes further and requests that the court grant prospective relief that Bank of America can never violate the automatic stay, by anything it says or does so long as it relates to discussion of its claim and a short-sale.

> "The authorization requested will be valid notwithstanding [sic.] the automatic stay provisions of 11 U.S.C. § 362(a), and the Authorized Parties will not be held liable for violations of the stay for communication in furtherance of that purpose during Debtor's case."

Motion, p.2:9-12.

On its face, Debtor's counsel appears to be advocating on behalf of Bank of America for blanket relief from the stay for whatever the Bank does or says to the Debtor in connection with discussing its claim and any possible short-sale. Seeking to obtain such relief appears to be consistent with providing legal representation to the Bank, not being counsel for the Debtor. Further, Debtor's counsel requests that the Bank be given a "get out of jail free card" for its conduct in any such communications, no matter how egregious or how they might actually violate the automatic stay.

The Debtor does not provide any legal authority to justify this type of order. In fact, in requesting such a "comfort order," the Debtor is implicitly arguing that in every other case where such an order was not issued, that the banks who negotiated short sales with debtors who are protected by the automatic stay were violating the provisions of § 362(a). By requesting such relief, the Debtor and Debtor's counsel appear to be under the assumption that negotiations to short sell property for the benefit of the estate, creditors, and Debtor is somehow an act in violation of the automatic stay. This is incorrect and the court will not issue "comfort orders" when no such order is necessary or required. FN.1.

FN.1. The court notes that the Chapter 13 Trustee has affirmatively stated that he has no opposition to the request for this prospective, unlimited, comfort order. July 2, 2015 Non-Opposition Docket Entry. In choosing to affirmatively state that he has no opposition, the Trustee is representing that there are good grounds for the relief requested. The court will address at the hearing the Trustee's belief that such grounds exist and what such grounds are for the requested order. Additionally, the grounds which exist for the requested relief that any conduct of the Bank, so long as it relates to the claim or short-sale cannot violate the stay.

Therefore, the Motion is denied.

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 that Short Sale Discussion Will Not Violate Stay filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

10. 15-22909-E-13 DPC-1 | **JENNIFER RIANDA, Lucas B. Garcia** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-21-15 [25]**

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on May 21, 2015. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.060 for two assets: (1) a New Holland Tractor for $4,500.00 and (2) Feed, Supplies, and Fertilizer for $300.00.

The Trustee argues that it does not appear that the Debtor is eligible for the claimed exemption because the Debtor does not operate a business and is a full time employee at Simi Group, Inc.

California Code of Civil Procedure § 704.060 provides for the following, in relevant part:

> (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:
>
> > (1) Six thousand seventy-five dollars $6,075)1, if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

Here, the Trustee's objection is well-taken. A review of the Debtor's Schedule I shows that the Debtor is a "Technical Writer/Support." There is no supplemental information on Schedule I that shows that a tractor or feed, supplies, and fertilizer are "necessary to and actually used" by the Debtor to earn a livelihood.

Therefore, the Trustee's objection is sustained, and the claimed exemptions as to (1) a New Holland Tractor for $4,500.00 and (2) Feed, Supplies, and Fertilizer for $300.00 under California Code of Civil Procedure § 704.060 are disallowed in their entirety. FN.1.

FN.1. The court notes that Debtor has offered no opposition to the Objection or explanation as to how such a grossly improper exemption could be claimed. The Schedules are filed under penalty of perjury and the statements therein are subject to the provisions of Federal Rule of Bankruptcy Procedure 9011. While the Debtor may not have the legal knowledge and training to understand the California exemption scheme, she is represented by counsel.

The court leaves it to the Chapter 13 Trustee, U.S. Trustee, and other parties in interest to address, if appropriate, the conduct of Debtor and her counsel in asserting this exemption. It may well have broader good faith implications in this case and the Debtor's ability to prosecute any Chapter 13 case. This is Debtor's second Chapter 13 case. In the First Chapter 13 Case, No. 13-23661, she was represented by the same counsel in this case. The First Chapter 13 Case was filed on March 19, 2013 and dismissed on July 1, 2013. The First Bankruptcy Case was dismissed because of: (1) Debtor's failure to make any plan payments, (2) Debtor failing to properly file a motion to confirm and to serve such motion and plan on the creditors, and (3) the Debtor failing to attend the First Meeting of Creditors. 13-23661; Civil Minutes, Dckt. 32.

In the current case, the Chapter 13 Trustee has filed a Motion to Dismiss. Dckt. 30. The grounds for dismissal echo those of the First Bankruptcy Case, the Chapter 13 Trustee alleging that: (1) Debtor has failed to attend the First Meeting of Creditors, and (2) Debtor is delinquent $9,500 under the required plan payments, having failed to make any monthly payments.

In sustaining the objection to confirmation filed by Bank of New York Mellon, Trustee, one of the grounds relied upon by the court was a showing that Debtor owed $266,357.18 in pre-petition arrearage on the Bank's claim (rather than the $210,000 arrearage asserted by Debtor). Civil Minutes, Dckt. 36. The proposed plan seeks to have Debtor make the current monthly installment of $5,272 and then a arrearage cure payment of between $3,500 (if the Debtor's arrearage amount was correct) and $4,439 (if the Bank's arrearage amount is correct. The basic monthly mortgage payment for Debtor's house would be at least $8,772, and as asserted by Bank would be as high as $9,711.

While Debtor shows gross income of $20,000 a month (including the "performance based bonus" on Schedule I, they have only $4,800 a month in withholding for federal income taxes, state income taxes, medicare, and social security. Debtor does list on Schedule I a $1,579.68 a month garnishment by the Franchise Tax Board. Dckt. 1 at 21-22.

On Schedule E Debtors state under penalty of perjury that no creditors have priority claims (such as tax claims). *Id.* at 17. On Schedule F Debtor

states under penalty of perjury that only Leland Rianda, her husband, is a creditor with an unsecured claim in the amount of $42,000.00. *Id.* at 18. On Schedule D Debtor states under penalty of perjury that she has only one creditor with a secured claim, Bank of America, with a claim in the amount of $848,000 which is secured by a residence with a value of $1,150,000. *Id.* at 16.

When the First Chapter 13 Case Debtor stated under penalty of perjury that Debtor and her spouses monthly income from wages was $16,500. 13-23661, Dckt. 24 at 16. Further, Debtor received additional income of $1,000.00 in form of "Family Support from Debtors [sic.] Father." *Id.* This statement of Income under penalty of perjury on Schedule I in the First Chapter 13 case appears to be inconsistent with the income disclosed in response to Questions 1 and 2 on the Statement of Financial Affairs in the First Chapter 13 case:

	2013 YTD (2 Months)	2012	2011
Wife's Employment Income	$9,000.00	$1.00	$1.00
Husband's Employment Income	$20,000.00	$1.00	$1.00
Wife's Family Support	$3,000.00	$10,000.00	$10,000.00

Id. at 20, 21.

In the Current Chapter 13 Case, in addition to stating under penalty of perjury that Debtor's and her husband's current gross income from employment is $20,000 a month, Debtor states the following under penalty of perjury in the Statement of Financial Affairs:

	2015 YTD (3 Months)	2014	2013
Wife's Employment Income	$13,500.00	$9,000.00	$16,250.00
Husband's Employment Income	$22,800.00	$20,000.00	$10,875.00
Wife's Family Support	$5,000.00	$3,500.00	$5,000.00

Dckt. 1 at 26-27. (In response to Questions 1 and 2 Debtor states the current income for year to date "2014" and prior two years 2013 and 2012. The court believes that this is a typographical error and infers that Debtor was stating for year to date 2015, and prior years 2014 and 2013.

While Debtor's income is averaging $4,500 a month for the first three months, her husband's income is only $7,600 a month. Well below the $10,000 a month stated under penalty of perjury on Schedule I. Further, while stating under penalty of perjury that, with bonuses, Debtor's income was $4,500 a month

and her husband's income was $12,000 a month in 2013 (13-23661; Schedule I, Dckt. 24 at 16), she now states both actually were significantly less – $1,354 for Debtor ($16,250/12 months) and $906 for Debtor's husband ($10,875/12 months).

These statements under penalty of perjury, prepared with the assistance of counsel, appear unreconcilable.

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 Exemptions 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 is sustained and the claimed exemptions are disallowed in their entirety.

11. 15-23710-E-13 JENNIFER MUELLER MOTION TO CONFIRM PLAN
MAC-1 Marc A. Caraska 6-3-15 [28]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors.

IMPROPER SERVICE TO INTERNAL REVENUE SERVICE

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

LOCAL RULE 2002-1
Notice Requirements

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

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

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

. . .

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

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

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

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

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

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

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

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

Confirmation Notwithstanding Defective Service

The Debtor's Chapter 13 Plan provides for the payment of the Internal Revenue Claim as a Class 5 priority claim. The amount stated in the Plan is $23,000.00. The Internal Revenue Service has filed its proof of claim in the amount of $23,744.08, asserting that only $4,237.60 is entitled to priority status. Proof of Claim No. 4, filed on July 8, 2015.

The Chapter 13 Plan requires monthly plan payments of $1,778.28 for a period of sixty months. From this the Chapter 13 Trustee's fees of $142 (estimated at 8%) and $2,500 in Chapter 13 attorneys's fees (averaged for discussion purposes at $42 a month if they were amortized over the full sixty months of the plan). That leaves $1,594.28 a month to fund payments to creditors. The monthly disbursements required under the plan are:

Plan Payment	$1,594.28	
Wells Fargo Home Mortgage	($1,175.45)	
IRS Priority Claim	($418.83)	Per Month For Eleven Month to Pay $4,237.28 IRS Priority Claim in Full
General Unsecured Claims	($418.83)	Per Month For Months Twelve through Sixty

The Internal Revenue Service asserts having a general unsecured claim of approximately $19,500. As of July 17, 2015, an additional $5,400 of general unsecured claims have been filed. However, the deadline for non-governmental creditors filing proofs of claim does not expire until September 16, 2015. Dckt. 16. On Schedule F Debtor lists creditors (not including the Internal Revenue Service) having general unsecured claims totaling $64,500. Assuming monthly payments of $418.83 being allocated to general unsecured claims for forty-nine months, there is an estimated twenty-five percent dividend on unsecured claims, if all of the creditors scheduled by the Debtor file proofs of claim.

It appears that the treatment of the Internal Revenue Service claim is consistent with the Bankruptcy Code. The court confirms the plan notwithstanding the defect in service. Such confirmation is without prejudice to the rights of the Internal Revenue Service to assert a defect in service and the treatment of its claim in this Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed, without prejudice to the rights of the IRS concerning the treatment of its claim and possible defective service.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 3, 2015 is confirmed, without prejudice to the rights of the Internal Revenue Service concerning the treatment of its claim and possible defective service. 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.

12. 11-25018-E-13 RAC-4 | CLIFFORD/VICKI GUSTAFSON Richard A. Chan | MOTION TO APPROVE LOAN MODIFICATION 6-8-15 [81]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Clifford and Vicki Lynn Gustafson ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the

plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,570.58. The new principal balance under the modification will be $198,820.49, the interest rate of the modified loan will be 5.20%, and the estimated modified payment includes taxes and insurance.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Clifford and Vicki Lynn Gustafson 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 court authorizes Clifford and Vicki Lynn Gustafson ("Debtor") to amend the terms of the loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 3638 Millbrae Road, Cameron Park, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 84.

13. 14-27118-E-13 SJS-2 | **MELVYN/RITA LIBMAN** Scott J. Sagaria | **MOTION FOR AN ORDER TO SHOW CAUSE FOR VIOLATION OF THE CONFIRMATION ORDER** 6-12-15 [68]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 12, 2015. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for an Order to Show Cause for Violation of the Confirmation Order is ----------.

The Motion for an Order to Show Cause for Violation of the Confirmation Order filed by Melvyn and Rita Libman ("Debtor") is accompanied by Debtor's Declaration. Citibank, N.A. ("Creditor") holds second deed of trust in the amount of $79,087.72 on Debtors' primary residence. Debtors' First Amended Plan was confirmed on November 3, 2014. Dckt. 53. Debtors claim that Creditor violated 11 U.S.C. § 1327 by continuing collections after Plan confirmation, and are seeking damages, costs, and attorney's fees pursuant to 11 U.S.C. § 105(a).

The court begins with the Motion, which states with particularity (Fed. R. Bank. P. 9013) the following grounds upon which the relief is based:

I. Debtor owns real property commonly known as 5921 Pikes Park Way.

II. On July 7, 2014, Debtor commenced the present bankruptcy case.

III. Debtor filed a motion to value the secured claim of Citibank, N.A. ("Creditor") the day after the case was filed. The motion to value was granted (but the motion does not state what relief was granted).

IV. The Debtor has confirmed a Chapter 13 Plan in this case.

V. Creditor has sent "collection letters" each month for payment of the loan.

VI. Creditor has called for payments on the "avoided" (term used by Debtor in Motion) note.

VII. First Claim for Relief

A. The Pikes Park Property is property of the bankruptcy estate.

B. A dispute exists about Creditor's ability to collect the claim (debt which was valued) which is included in the Chapter 13 Plan.

C. Creditor has attempted (Debtor not expressly stating what conduct was made) to collect payment on the claim.

VIII. Second Claim for Relief

A. Debtor seeks to recover damages, costs, and attorneys' fees.

B. Creditor has made several "harassing attempts" (not described) to collect on the claim.

C. Debtor has incurred legal fees to prevent this continued improper conduct by Creditor.

IX. General Allegations ("Introduction" section of Motion)

A. Creditor has "embarked on a deliberate scheme to circumvent the [confirmed] plan's exclusive method of payment and collect payments from Debtor.

B. Debtor received from Creditor the following notices requesting payment:

Date Notice Received	Requesting Payment of	Payment Due Date
October 28, 2014	6039.91	November 28, 2014
November 28, 2014	6888.34	December 28, 2014
December 28, 2014	7736.77	January 28, 2014

C. Further, Creditor called Debtor on December 6, 2014, seeking payment for the notice sent on November 28, 2014.

D. On January 6, 2015, Debtor spoke with a representative of Creditor, who told Debtor that Creditor had received relief from the stay to continue collections against Debtor.

Motion, Dckt. 68.

The following evidence has been provided in support of the Motion.

I. Debtor Melvyn Libman testimony in his Declaration (Dckt. 70) under penalty of perjury includes:

A. Debtor has made his plan payments timely.

B. Mr. Libman authenticates the notices from Creditor filed as Exhibit A and testifies to dates received.

C. Mr. Libman testifies that he received a phone call from Citibank, N.A. on "December 6, 2015 [sic.]" seeking payment on the amount in the November 28, 2014 notice.

D. That Mr. Libman spoke with a representative of Citibank, N.A. on January 6, 2015, and was told by that representative that Citibank, N.A. had permission to contact Mr. Libman directly to collect the debt.

II. Debtor's counsel, Scott Sagaria provides his Declaration (Dckt. 71), under penalty of perjury in which he testifies:

A. Documents were filed in this case and the Plan was confirmed.

III. The following Exhibits (Dckt. 72):

A. Line of Credit Statement Dated October 28, 2015, which includes:

1. Minimum Payment Due.....$6,039.91

B. Line of Credit Statement Dated November 28, 2014, which includes:

1. Minimum Payment Due.....$6,888.34

C. Line of Credit Statement Dated December 28, 2014, which includes:

1. Minimum Payment Due.....$7,736.77

The Declaration of Melvyn Libman asserts that Debtors received letters from Creditor on October 28, 2014, November 28, 2014, and December 28, 2014,

all requesting payment and providing due dates. Dckt. 70. Debtor further states that he received phone calls from Creditor on December 6, 2014 and January 6, 2015, requesting payment and, on the latter date, stating that they had permission from the Bankruptcy Court to contact Debtor directly. Debtor has attached as Exhibit A three billing statements from Creditor that appear to be those discussed supra in the Libman Declaration. Dckt. 72.

The Declaration of Scott Sagaria asserts that a review of Pacer shows that Creditor received notice from the Bankruptcy Noticing Center of Debtors' bankruptcy petition, Debtors' First Plan and Amended Plan, the court's order confirming the Amended Plan, and Debtors' Motion to Value the Collateral of Creditor. Dckt. 71.

STANDARDS FOR REVIEWING CONDUCT ALLEGED TO BE IN VIOLATION OF CONFIRMED PLAN AND AUTOMATIC STAY

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay or other provisions, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

Attorneys' fees may only be recovered for work involved in bringing about an end to the stay violation, not for pursuing an award of damages. *Sternberg v. Johnston*, *id.*, 947-48 (9th Cir. 2011) ("[P]roven injury is the injury resulting from the stay violation itself. Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)."), *cert. denied*, 2011 U.S. LEXIS 6502 (2011). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*,

98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

11 U.S.C. § 1327(a) states:

> (a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

Pursuant to § 1327(a), the provisions of a confirmed Chapter 13 plan bind the debtor and each creditor which has notice of the plan. *In re Burnett*, 646 F.3d 575, 581 (8th Cir. 2011). Although not specifically mentioned, the trustee is also bound by the plan because the trustee normally acts on behalf of creditors or, occasionally, the debtor. 11 U.S.C. § 1327(a); *see* H.R. Rep. No. 595, 95th Cong., 1st Sess. 430 (1977), *reprinted in* App. Pt. 4(d)(I). Even if the provisions of a Chapter 13 plan are improper, creditors with notice of the plan who fail to object are bound by them. Burnett, 646 F.3d at 581 (stating "a confirmed plan is given res judicata effect even when it violates the Code"). *In re Wright* (Bankr. N.D. Iowa 2011) 461 B.R. 757,760.

DISCUSSION

The substance of the present Motion is that Citibank, N.A., with knowledge of the bankruptcy case and confirmation of the plan, has continued post-petition to try and obtain payment from the Debtor outside a confirmed Chapter 13 Plan on its secured and unsecured claims. (The claim having been bifurcated by an 11 U.S.C. § 506(a) valuation.)

Missing from the present Motion is any indication that, other than the present Motion, Debtor's counsel attempted to communicate with Citibank, N.A. or any attorneys who regularly represent Citibank, N.A. in the various courts in which Debtor's counsel regularly practices. While Debtor's counsel's failure to attempt to communicate with the creditor is not a "get out of violation free card," it is a factor for the court to consider what legal fees would be reasonable.

Debtor's Amended Chapter 13 Plan which has bene confirmed in this case clearly provides for Class 2 B (11 U.S.C. § 506(a) value) for Creditor's secured claim. Dckt. 35.

In reviewing the proofs of claims filed in this case the court notes the following:

1. eCAST Settlement Corporation, as the assignee of Citibank, N.A. filed a proof of claim on October 7, 2014. Proof of Claim No. 2. The Sale and Assignment document attached to Proof of Claim No. 2 is August 27, 2014. This is more than one month after the July 9, 2014 commencement of Debtor's bankruptcy case.

2. eCAST Settlement Corporation, as the assignee of Citibank, N.A. filed a proof of claim on October 7, 2014. Proof of Claim No. 3. The Sale and Assignment document attached to Proof of Claim

No. 2 is August 27, 2014. This is more than one month after the July 9, 2014 commencement of Debtor's bankruptcy case.

3. CitiMortgage filed a proof of claim on October 22, 2014. Proof of Claim No. 11. This is filed as a secured claim in the amount of $182,851.95.

   a. The "Standing Statement" attached to this Proof of Claim states that CitiMortgage, Inc. "services" the loan upon which the claim is based. This indicates that CitiMortgage, Inc. is not actually the creditor, but is "servicing" the loan as the agent for the actual creditor.

   b. The Note attached to Proof of Claim No. 11 identifies the "Lender" as "Citibank, N.A." The Note promises payment of the obligation to Citibank, N.A. The note further provides that the note may be transferred. The Note bears an endorsement in blank. The Deed of Trustee attached to Proof of Claim No. 11 also identified Citibank, N.A. as the "Lender" and the beneficiary (with MERS servings as its nominee) whose note is secured by the Deed of Trust. The attachments also include an Assignment of the Deed of Trust by MERS to CitiMortgage, Inc.

This Motion was noticed and set for hearing using the procedure by which written opposition from Citibank, N.A. was required to be filed prior to the hearing. No evidence to the contrary has been presented to the court.

The uncontradicted evidence is that Citibank, N.A., after the commencement of this case repeatedly attempted to obtain payment from Debtor in violation of the automatic stay and confirmed plan in this case. Further, that a representative of Citibank, N.A. affirmatively misrepresented to the Debtor that Citibank, N.A. had obtained relief from the automatic stay and that it could demand payment from the Debtor notwithstanding the bankruptcy case.

Citibank, N.A. has failed to provide an explanation, acknowledgment of error (whether one-off human or systemic), or step forward to address these allegations.

The court finds that the Chapter 13 Plan was confirmed in this case on November 3, 2014, which plan provides for the bifurcated secured and unsecured claim of Citibank, N.A. in this case. Amended Plan and Order Confirming, Dckts. 35 and 53; Order Valuing Secured Claim Pursuant to 11 U.S.C. § 506(a), Dckt. 39. The confirmed plan provided for, and bound Debtor and Citibank, N.A. to the rights and obligations for payment of the debt as provided in the Plan. *Trulis v. Barton et al,* 107 F.3d 685, 691 (9th Cir. 1995).

While the Chapter 13 Plan revested the real property in the post-confirmation Debtor, it did not grant the Debtor a discharge.

Citibank, N.A. has violated the confirmed Chapter 13 Plan in this case and the order confirming the Plan. Citibank, N.A. further demanded payment on its pre-petition obligation while this bankruptcy case was pending and before the automatic stay terminated as to the Debtor. 11 U.S.C. § 362(c)(2), 362(a)(6).

The court having determined that the confirmed plan in this case and the automatic stay having been violated, the court shall set further proceedings for the presentation of evidence on the issue of damages, attorneys' fees, and sanctions.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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 an Order to Show Cause for Violation fo the Confirmation Order filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxx.

14. 15-22019-E-13 KATHY COARD AMENDED MOTION TO CONFIRM PLAN
JAP-1 James A. Pixton 5-27-15 [36]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2015. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

15. 15-23622-E-13 DPC-1 | **DANIEL/ADRIANA NEVES** | **Justin K. Kuney** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **6-10-15 [16]**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 10, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the net income is not listed properly on Schedule I. The Trustee states that Schedule I lists Debtor Adriana Neves as being employed by the State of California -Social Services, with a gross income in the amount of $5,758.00. Her net income on line 7 is listed as $4,653.00.

The Trustee states that according to the Statement of Earnings and Deductions for Debtor Adirana Neves bearing the issues dates of January 30, 2015, March 1, 2015, and April 1, 2015, her gross income is $5,758.00 per month. However, these list her net income to be $456.23 less than on the Schedule I. The Trustee argues that based on this discrepancy, the Debtor cannot afford the plan payments.

Additionally, the Trustee argues that the proposed plan is not the Debtor's best efforts because the Debtor does not provide for any future tax refunds. The Trustee argues that the Debtor received a total refund of $4,561.00 for tax year 2014 but does not provide any provision in the plan for future tax returns. The Trustee states that the Debtor appears to be an over the median debtor and that the Debtor's income should be adjusted to either reflect the tax refund income or a lower tax expense.

The Trustee's objections are well-taken.

As to the Trustee's first objection, it appears that the Debtor has overstated the net income from Debtor Adriana Neves' employment, which results in an overstatement of net income for plan payments of $456.23. The plan proposes payments of $776.00 for 19 months then $1,520.00 for 41 months. Without the Debtor actually having the additional $456.23 for plan payments, it appears that the Debtor cannot make the plan payments. 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, a review of the plan shows that the Debtor does not provide for any future tax returns. As evidences by the Debtor's prior year return, the Debtor may have substantial tax returns that should be provided for in the plan. Instead, the Debtor does not provide for such payment nor has the Debtor reduced the tax deductions so that all disposable income is provided for in the plan. Without such provisions, it appears that the proposed plan is not the Debtor's best efforts. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. 10-37223-E-13 PGM-4 — WILLIAM/DEBORAH JOHNSON — Peter G. Macaluso — MOTION FOR NOTICE OF DEATH AND OMNIBUS RELIEF UPON DEATH OF DEBTOR — 6-10-15 [80]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Deborah Johnson, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, William Johnson. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1, Fed. R. Bankr. P. 7025, and Local Bankr. R. 1016-1.

The Debtor filed for relief under Chapter 13 on June 30, 2010. On October 19, 2010, the Debtor's Chapter 13 Plan was confirmed. Dckt. 49. On March 24, 2012, Debtor William Johnson passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on June 10, 2015. Dckt. 83. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

The Debtor also seeks for the waiver of the 11 U.S.C. § 1328 requirement for Debtor William Johnson.

DISCUSSION

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

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

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

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

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Deborah Johnson has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Deborah Johnson, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, William Johnson. The court grants the Motion to Substitute Party.

In the Motion surviving Debtor Deborah Johnson states the following grounds for continuing this case as a Chapter 13 case for the deceased Debtor:

A. The two Debtors jointly have funded this Plan with payments of $31,850.00.

B. William Johnson passed away on March 24, 2012.

C. There now remains one additional payment of $550.00 to be paid to complete the sixty monthly payments required under the Plan.

D. The Clerk will not be able to enter a discharge for the deceased Debtor without the court allowing the administration of this case to continue as to the deceased Debtor and waiving the § 1328 requirements.

Motion, Dckt. 80.

The court further infers that the prosecution and funding of the plan in this case was with asserts which were community property, which after the deceased Debtor's death were transmuted into the surviving Debtor's separate property. Further, that Debtor and the deceased Debtor addressed their creditors and their claims through this bankruptcy case, and to not continue in the administration of this case as to the deceased Debtor to allow the entry of a discharge could cause undue prejudice to the surviving Debtor of having to address those claims and administer what had been community property through a state court proceeding, which would provide for the payment of such debts in an manner inconsistent with the confirmed Plan in this case. Finally, that the surviving Debtor has continued in good faith in the prosecution of this case in the belief that both she and the successor to the deceased Debtor would be obtaining discharges, and the surviving Debtor would obtain her reorganized "fresh start" free of the debts that surviving Debtor and the deceased Debtor provided for in the Plan. FN.1.

FN.1. Consumer attorneys should not take these inferences as the complete analysis of whether a case should be continued to be administered, or even if it fully and completely states grounds for the continued administration. In light of the facts and circumstances of this case the court is willing to draw such inferences for this case only.

Debtor William Johnson died before being able to satisfy the 11 U.S.C. § 1328 requirement. The surviving Debtor, as the personal representative of the deceased Debtor, requests that the certifications required thereunder be waived. This certification is that there were no domestic support obligations which were owed, or if owed, have been paid as required by the Bankruptcy Code. The surviving Debtor, as the personal representative of the deceased Debtor, can provide that certification. The request to waive the 11 U.S.C. § 1328 certification is denied.

Lastly, the Motion suggests in passing that the court also issue an order granting Debtor William Johnson a discharge. However, this is improper under Local Bankr. R. 1016-1 as it is not one of the reliefs permitted to be requested in a single Motion. The granting of the Discharge is governed by the procedure in Local Bankruptcy Rule 5009-1. The requirements of that Rule are not bypassed by Local Bankruptcy Rule 9016-1 and Federal Rule of Civil Procedure 18 has not been incorporated into allowing the joinder of discharge relief into the relief which may be combined in one motion pursuant to Local Bankruptcy Rule 1061-1(b). Therefore, the Debtor's request for the entry of discharge for Debtor William Johnson is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Deborah Johnson is substituted as the successor-in-interest to William Johnson, and that the Chapter 13 case as to the deceased Debtor William Johnson shall continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor William Johnson is denied.

IT IS FURTHER ORDERED that the request for entry of discharge for Debtor William Johnson is denied without prejudice.

17. 11-23426-E-13 TJW-1 — STEPHEN/JANET TOLLNER — Timothy J. Walsh — CONTINUED MOTION TO MODIFY PLAN 3-21-15 [71]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2015. By the court's calculation, 59 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on August 11, 2015.

Stephen and Janet Tollner ("Debtors") filed the instant Motion to Confirm the Modified Plan on March 21, 2015. Dckt. 71.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 29, 2015. Dckt. 77. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors have not filed supplemental Schedules I or J in support of the proposed plan. This case was filed February 2011, now more than four years ago.

2. The Debtors scheduled Chase Home Finance in Class 3 of the confirmed plan and proposed modified plan the surrender of property at 443 Rolling Oak Drive, Vacaville, California. However the Debtors have not reported a change of address. Additionally, Deutsche Bank National Trust filed Proof of Claim No. 17 listing this property. Chase Home Finance was amending Proof of Claim No. 22 in light of a loan modification. However, the court has not authorized any loan modification and it appears that the Debtors still reside at the property.

3. The proposed monthly dividend for the Class 2 creditor is not sufficient. The Debtor is adding the secured part of Internal Revenue Service's claim as a Class 2 Claim. Proof of Claim 29. The claim is for $11,211.99 with 4% interest. The proposed monthly dividend is $210.00 per month. Only ten months remains in the Debtors' plan so the monthly payment is insufficient to pay the plan in full.

MAY 19, 2015 HEARING

At the hearing, the Trustee and Debtor agreed to supplemental pleadings to address the Trustee's opposition and confirm the proper computation of the Internal Revenue Service claims. The court continued the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on July 21, 2015. Dckt. 82. The court ordered that the Trustee shall file Supplemental Opposition on or before May 27, 2015; Debtor shall file and serve Supplemental Pleadings on or before June 24, 2013, and Replies, if any, shall be filed and served on or before July 1, 2015.

DISCUSSION

Since the prior hearing, no supplemental papers by the Trustee or Debtor have been filed.

On July 9, 2015, the Debtor and Chapter 13 Trustee filed a Motion requesting the court continue the hearing. Dckt. 85. Two grounds are stated for the continuance:

A. Debtor's counsel is unavailable to attend the July 21, 2015 hearing; and

B. The continuance will allow Debtor's counsel to provide supplemental pleadings regarding the Debtor's finances.

No reason is why counsel for Debtor is unavailable to attend the July 21, 2015 hearing. This Motion was originally filed on March 21, 2015. At the May 19, 2015 hearing the court continued it to the July 21, 2015 hearing date. In continuing the hearing, Debtor was responsible for filing supplemental pleadings on or before June 24, 2015. Nothing was filed in that thirty-six day period, nor has been filed to date.

It may be that good reason exists for continuing the hearing and good reason exists for Debtor failing to timely file the supplemental pleadings. But no such reason has been provided to the court.

When earlier presented with a proposed order to continue the hearing, the court granted the motion and continued the hearing based on the "unavailability of counsel." It was not made clear to the court that Debtor had failed to file the supplemental pleadings as earlier required. The court did not carefully review the court's file to determine when the representations in the Stipulation were complete. It appears that the court's general rule requiring a motion (*ex parte* or noticed) for the issuance of an order should have been followed, rather than the court relying upon what was merely stated in the stipulation.

18. 15-23930-E-13 DPC-1 — CHRISTOPHER/GAIL BROWN — Mohammad M. Mokarram — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 6-23-15 [33]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Trustee filed a "Notice of Withdrawal" on July 1, 2015, Dckt. 38, stating that the Objection to Confirmation. The court construes this "Notice" as an election to dismiss the Objection to Confirmation without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Objection was filed. **The Objection having been dismissed without prejudice, the matter is removed from the calendar.**

19. 15-23332-E-13 DPC-2 | **KATHERINE GERRARD** | **David S. Silber** | **CONTINUED MOTION TO DISMISS CASE** | **6-10-15 [25]**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is granted.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 10, 2015. Dckt. 25. The Trustee argues that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee also asserts that the Debtor did not commence making plan payments and is $272.63 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee stated at the hearing that the Debtor has made payments and is not delinquent at this time, with the Debtor being paid through the June 2015 payment.

Further, Trustee states that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee stated at the hearing that the tax returns have been provided as of June 18, 2015.

Finally, the Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. A review of the docket shows that no motion to confirm has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). The Trustee also points to numerous issues with the proposed plan, including failures to completely fill out all necessary aspects, including failing to include the proposed dividend to unsecured creditors or to provide for the treatment of a creditor.

CREDITOR'S REPLY IN SUPPORT OF TRUSTEE'S MOTION

WF Homeowners Association, Inc. ("Creditor") filed a supplement to Trustee's Motion to Dismiss on June 15, 2015. Dckt. 29. Creditor states that Debtor filed this case April 23, 2015 in order to stop foreclosure of her home on April 28, 2015. Creditor argues that the incomplete state of Debtor's petition indicates that Debtor filed her petition for the sole purpose of delaying Creditor from foreclosing.

Creditor further asserts that Debtor has a history of filing for Bankruptcy to delay creditors. Creditor states that it set an initial foreclosure date for August 6, 2013. Two days before Creditor could foreclose, Debtor filed for Bankruptcy on August 4, 2013. Creditor argues that Debtor's history of filing for Bankruptcy to stop foreclosure is evidence of bad faith and an intent to cause unreasonable delay.

JUNE 24, 2015 HEARING

At the hearing, the court continued the hearing to allow the Debtor, counsel, and other professionals to discuss what plan, if any, may be in the Debtor's best financial interests. Dckt. 32

DISCUSSION

No supplemental papers have been filed by the Debtor since the court continued the matter.

The Trustee filed the Trustee Report at 341 Meeting on July 2, 2015 which states that the Debtor appeared along with counsel.

On July 9, 2015, The Trustee filed a Status Report. Dckt. 38. The Trustee states that: (1) the Debtor's Plan filed on May 7, 2015 has not bee served; (2) The Debtor has not addressed the Trustee's prior concerns relating

to the Schedules; and (3) no amended plan or motion to confirm has been filed and set for hearing.

The court notes that an Objection to Confirmation was filed by Provident Funding Associates, L.P. on July 10, 2015. Dckt. 41. The hearing on this Objection has been set for August 11, 2015. The Objection asserts that the proposed plan does not provide for curing the $3,574.24 pre-petition arrearage on the Provident Funding claim. More significantly, Provident Funding points out that the Chapter 13 Plan (which has not been served and for which there is no motion to confirm) fails to provide for making any payment on its secured claim.

There appears to possibly be a bad faith filing in which the Debtor does not act in accordance with her duty as a debtor and a fiduciary of the estate as evidenced by her skeletal filings and failure to provide for all claims.

At the hearing, counsel for Debtor stated that due to a family medical matter the delivery of the tax documents was delayed. The Debtor did not appear at the First Meeting of Creditors because counsel was requesting that the First Meeting be continued and thought she did not have to appear.

The court's review of the Schedules filed in this case indicate that the Debtor's ability to prosecute a plan may be questionable. However, it appears that she has a substantial equity in her residence. The court continued the hearing to allow Debtor and counsel for Debtor to determine how to proceed to protect Debtor's equity in the property.

Taken at face value on Schedule D, Debtor's real property is stated to have a value of $238,000 and is subject to liens totaling approximately $85,000. Dckt. 12 at 21. Looking at Schedule I, Debtor has gross income of only $1,832 a month. *Id.* at 28. On Schedule J Debtor lists the monthly mortgage expense (including property taxes but not insurance) of only $302 a month. *Id.* at 29.

The proof of claim filed by Provident Funding lists a claim of $74,610.69, for which there is a $3,574.24 arrearage. Proof of Claim No. 1. It is asserted in the Proof of Claim Attachment Part 3 that Debtor is in default for nine installments which total $2,824.57.

At the hearing, ----

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted.

20. 13-26134-E-13 CHARLES/TOMMI BOWLDEN MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 6-9-15 [54]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. 10-53637-E-13 JGD-10 | **G./KATHLEEN ULBERG** | **John G. Downing** | **CONTINUED MOTION TO SET ASIDE DISMISSAL OF CASE AND/OR MOTION FOR ENTRY OF DISCHARGE 6-16-15 [210]**

APPEARANCE OF JOHN DOWNEY, COUNSEL FOR DEBTOR REQUIRED FOR JULY 21, 2015 HEARING

NO TELEPHONIC APPEARANCE PERMITTED

DEBTOR DISMISSED:
12/04/2014
JOINT DEBTOR DISMISSED:
12/04/2014

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Set Aside Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Set Aside Dismissal is xxxxx.

Wendell and Kathleen Ulberg ("Debtor") filed the instant Motion to Set Aside Dismissal on June 16, 2015. Dckt. 210. The Debtor requests that the court set aside the dismissal entered on December 4, 2015 and to enter the Debtor's discharge. FN.1.

FN.1. The court notes that the Motion is improperly requesting multiple forms of relief in a single motion in violation of Fed. R. Civ. P. 18. The court will deny without prejudice the request for discharge and will construe the instant Motion as a request to vacate the dismissal. Whether a discharge should properly be entered will be subsequently addressed as provided by the Local Bankruptcy Rules and General Orders of this court.

The Debtor request the court pursuant to Fed. R. Civ. P. 60(b) to vacate the dismissal because Debtor's counsel believed that the Motion to Dismiss was made moot by the filing of modified plan and that , regardless, creditors had been paid in full under the terms of the operative Chapter 13 Plan.

After a review of the case history and the related adversary proceedings, the Debtor states that the Chapter 13 Trustee filed a Motion to Dismiss on November 3, 2014 due to the Debtor being delinquent. Dckt. 180. On November 11, 2014, Debtor filed a motion to Modify the Chapter 13 Plan to provide for distribution of what should have been over $3,000.00 in funds that Debtor's counsel believed would not have been disbursed. The Debtor's counsel believed that filing the Motion to Modify made the dismissal moot. FN.2.

FN.2. As discussed in greater detail below, Debtor offers no explanation as to why counsel believed that a pending motion could just be ignored. For more than five years the judge in Department E has made it clear that motions, including motions to dismiss, cannot be ignored. Merely because an attorney may believe that an opposition to a motion could be filed which would result in the motion being denied is not a basis for ignoring the motion and believing that the opposing party or court will assemble such an opposition for that attorney.

The court granted the Motion to Dismiss on December 3, 2015. Dckt. 192. Neither Debtor nor Debtor's counsel responded to the Motion to Dismiss nor did either make an appearance at the hearing date on the Motion.

The Debtor states that the reason for the delay in filing the instant Motion to Vacate was due to discussions between Debtor and Debtor's counsel over whether they wished to file a Chapter 7 or to seek the reinstatement of the Chapter 13. The Debtor decided that the latter would be preferable since the holder of secured loan against the Debtor's Mazda is refusing to provide title. Now, after more than six months have passed, the Trustee and counsel have expended time and effort in closing this case, Debtor now comes forward seeking to have the dismissal vacated.

APPLICABLE LAW

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

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

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

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

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

JUNE 30, 2015 HEARING

At the hearing, the Debtor did not make an appearance. Following the hearing, the Debtor's counsel appeared and informed the courtroom deputy that, due to unexpected traffic delays, he was not able to attend the hearing. In light of the unexpected delay, the court issued an order continuing the hearing to 3:00 p.m. on July 21, 2015. Dckt. 219. In this order continuing, the court

explicitly ordered that **“no further pleadings shall be filed for this matter.”**

DISCUSSION

After nearly the case having been dismissed for seven months, the Debtor filed the instant Motion seeking to vacate the order dismissing the case due to the Debtor’s delinquency. The Debtor argues that due to the failure of the Debtor to file an opposition to the Motion to Dismiss, the failure of the Debtor to read the posted tentative disposition prior to the hearing on the Motion to Dismiss, the failure of the Debtor to attend the hearing on the Motion to Dismiss, and Debtor’s counsel assuming that the filing a Motion to Confirm without responding to the Motion to Confirm was based on counsel’s independent conclusion that he had rendered the Trustee’s motion Moot.

While the Motion is long in reciting facts about the case, the grounds stated with particularity (Fed. R. Bankr. P. 9013) upon which Debtor relies is stated as,

> “Grounds for the Motion are set forth in detail below but include that counsel believed that the Motion to Dismiss was made moot by the filing of modified plan and that regardless, creditors had been paid in full under the terms of the operative Chapter 13 Plan.
>
> ...
>
> Unfortunately, given the belief that the Motion to Modify made the dismissal moot and given the fluid situation in both the main case and the Adversary Case (in which a motion was pending regarding compliance with the Release and Settlement Agreement), counsel for Debtors did not calendar an opposition and on December 3, 2014, the Court issued a pre-hearing final ruling dismissing the case for failure to make payments.”

Motion pp. 2:1-4, 6:1-6; Dckt. 210.

The Debtor’s Motion does not cite to any specific section of Federal Rule of Civil Procedure 60(b) as grounds for the vacating. Instead, the Debtor merely cites to the general Rule for vacating orders in hopes the court will choose the right subsection to justify the relief sought.

No points and authorities is provided to the court setting forth the proper law and then applying the grounds to such law. In the Motion the court is told that Debtor is relying on “case law arising thereunder (Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024), including without limitation, *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993) and *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004).” Motion p.1:21-24.; *Id.* This is little more than an instruction to the court to undertake the legal research, analysis, strategy development, and then advocate the position for Debtor.

Improperly Filed Additional Pleadings

Notwithstanding the court having expressly ordered that no additional pleadings be filed, so that Debtor's counsel would be exactly in the same position as if he had timely appeared at the original hearing, it appears that Debtor's counsel has issue his own, oral order which sets aside the prior order of the court. On July 14, 2015, in violation of this court's June 25, 2015 Order, Dckt. 219, Debtor's counsel filed his "Points and Authorities Re: Motion to Set Aside Dismissal. Dckt. 230. No attempt is made to seek relief so as to file this untimely motion.

Second Motion to Vacate Dismissal

On July 15, 2015, Debtor had their counsel file a second, competing motion to vacate the order dismissing this bankruptcy case. Dckt. 232. Rather than attempting to prosecute the existing Motion in good faith, Debtor appears to be engaging an abusive pleading strategy to wear down creditors, the Trustee, and court by repeatedly throwing the same motion at the court. This litigation strategy undercuts the credibility that Debtor's counsel was unavoidably delayed for the prior hearing and makes it appear that having read the posted tentative the day before, Debtor's intentional litigation strategy was to have the hearing "unavoidably continued," and then try and find (or make up) grounds to facially address the legal concerns identified by the court in the posted tentative ruling.

DENIAL OF MOTION TO VACATE

It appears that the Motion to Confirm a Modified Plan (Dckt. 184) upon which counsel concluded that the Motion to Dismiss was rendered moot and no response was necessary, fails to demonstrate a likelihood of success on that motion. In reviewing that motion, after stripping out the long narrative review of the long, long, long history of the case, the grounds stated with particularity upon which Debtor asserted that confirmation of a modified plan pursuant to 11 U.S.C. §§ 1329, 1325, and 1322, consists of the following:

> "Based on this settlement and the resulting eviction of the Ulbergs, good cause exists for a modification of the plan, as the current plan was premised on the ongoing litigation and the Ulbergs continuing to reside at their house. Based on the Chapter 13 Statement of Current Monthly Income filed January 10, 2011 (Docket #20), Debtors income fell below the median and the applicable commitment period was three (3) years.
>
> After the injunction funds have been paid out, Debtors believe there will be $4,989.50 on hand with the trustee, more than sufficient to pay off the remaining $1828.15 owed to creditors.
>
> Wherefore, Debtors, G. WENDELL ULBERG, JR. and KATHLEEN ULBERG, request the court confirm the 2nd Modified Plan."

Motion to Confirm Modified Plan p. 4:6-16; Dckt. 184. Even if the court, without regard to the evidence or the truthfulness of the above, were to assume it was all true, Debtor fails to state grounds by which the court could confirm a modified plan pursuant to 11 U.S.C. §§ 1329, 1325, and 1322.

Interestingly, the Chapter 13 Trustee filed an opposition to the Motion to Confirm. Dckt. 189. The grounds for the opposition included: (1) the Plan failed to provide for the priority claim of the Internal Revenue Service, (2) misstated the amount of payments made by Debtor into the case ; and (3) the Debtor's declaration was misleading by stating to an exhibit which was not filed with the court. The opposition was filed on November 20, 2014. The hearing on the Motion to Dismiss was not conducted until December 3, 2014. The opposition having been filed, it does not seem reasonable that anyone could have thought that the filing of the plan and motion make the Motion to Dismiss moot (to the extent that a party can elect not to respond to a motion merely having unilaterally determined that the motion is moot and can be ignored).

Damages Cause by Debtor

The judge now sitting in Department E was shocked when he first began hearing matters in 2010 that attorneys would routinely ignore motions to dismiss cases and wander into court the day of the hearing to state "well, we're going to think about something to do that would be an opposition, so continue the hearing so we can think about it some more." (It was equally shocking that such a practice was allowed to exist in a federal court.) After breaking it gently to the attorneys over a six month period that they actually respond to motions to dismiss, the court has required such a response.

In cases where the attorney has elected to ignore the motion or believed that the court will go through a several hundred page docket, find pleadings that might be a basis for a motion to dismiss, then believed that the court would pull from the hundreds of docket entries grounds for opposing the motion, then the court would state those grounds, and finally advocate for the court to deny the motion, there has not been a showing that relief should be granted for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P 60(b)(1); Fed. R. Bankr. P. 9024. The attorney and client made the knowing, intentional act of not opposing the motion, allowing their default to be entered and then the court ruling on the merits. The default having been entered and not having been set aside, Rule 60(b) is not a backdoor appeal as a substitute for first vacating the default. *Consorzio Del Prosciutto Di Parma v. Domain Name Clearing Co.*, 346 F.3d 1193, 1195 (9th Cir. 2003); *In re Lam*, 192 F.3d 1309, 1311 (9th Cir. 1999).

This court also considers the impact on the debtor. Often times the debtor can easily refile a new case and proceed with obtaining the relief. Here, Debtor is losing a case which was four years old when it was dismissed. Four years of payments into a plan which are loss may cause substantial harm (and damages) to the Debtor.

In such situations, the court will consider whether the relief should be granted under Federal Rule of Civil Procedure 60(b)(6), "any other reason that justifies relief." However, in considering such "reason," the court also considers how the conscious decision of Debtor and Debtor's attorney has cause damages to the Chapter 13 Trustee – wasted attorneys' fees in having to deal with the order dismissing the case (not the motion itself or the hearing), the legal issues relating to the closing of the case, and now the motion to vacate the dismissing. While operating cost-effectively, even the Chapter 13 Trustee's counsel does not work for free. The Debtor's conscious decision to delay taking any action for six months caused even greater damages to be incurred by the Trustee.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

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

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

In similar situations where a debtor could suffer significant damages if the dismissal was not vacated, notwithstanding the debtor having intentionally failed to act, the court has required that the debtor or debtor's counsel reimburse the Chapter 13 Trustee for a reasonable amount of attorneys' fees. Such reimbursements are accounted to the U.S. Trustee as monies recovered for expenses and not a "bonus" for the Chapter 13 Trustee.

In this case, the court is first willing to assume a low $250.00 hourly rate for the Trustee's experience bankruptcy counsel. The court then will conclude that counsel spent 1.5 hours addressing post-dismissal legal issues after the hearing, then an additional 2 hours in considering the present motion, and 1 hour for the hearing on the present motion. That results in 4.5 hours, which at $250.00 an hour is $1,125.00 in an expense recovery for the Chapter 13 Trustee.

After the six month break-in period, requiring the expense reimbursement has had the corrective effect of all but doing away with a strategy of just ignoring motions to dismiss. When the debtor or counsel agree to pay the expense reimbursement, the court characterizes this as merely a payment of costs and not sanctions, such that it is not a reportable sanction to the State Bar if paid by counsel. If neither debtor or counsel choose to pay the damages caused by the fail to respond strategy, the court would deny the motion to vacate. To date, the court has not been required to deny the motion to vacate, as all attorneys have elected to reimburse this very modest, and otherwise unnecessary, expense to the Chapter 13 Trustee.

Debtor's Election to Not Prosecute Motion to Vacate

Debtor has now filed a second motion to vacate the dismissal. Commonly the court interprets such **duplicate motions as an election to have the first**

motion denied or dismissed. No party in interest has filed an opposition, so it would appear that Debtor could have elected to dismiss this Motion. Debtor has not.

Debtor has filed the new Motion to Vacate, using the same Docket Control Number and listing the hearing date on the motion as being June 30, 2015 – sixteen days before the date the new motion was filed. Debtor has not served this second motion on anyone (no certificate of service has been filed).

Lack of Good Faith Prosecution

Debtor offers no good faith, bona fide explanation as to why they let the dismissal stand for six months, other than they were playing out their options while the court, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest believed that Debtor was no longer pursuing the case.

This lack of good faith is further demonstrated by the fact that neither Debtor has provided (or was unwilling) to provide a declaration providing any testimony under penalty of perjury. Debtor fails to explain why no immediate action was taken upon the court dismissing their bankruptcy in December 2014. Rather, only Debtor's counsel throws his declaration at the court. The delay is explained as only counsel's "belief that the Debtors might elect to file a Chapter 7." This testimony by counsel is that Debtor's affirmatively sought to proceed outside of this bankruptcy case and did not view the dismissal as a mistake.

In his Declaration Debtor's counsel directs the court to an email discussion with the Trustee's office concerning the dismissal. It appears that this reference is to show the court that Debtor was actively addressing the December 2014 dismissal of the case. Exhibit E, Dckt. 215. This email thread is for communications which commence on December 12, 2014, and then conclude on December 16, 2014. These four days of email do not explain how, in light of Debtor electing not to vacate the dismissal for seven months and they engaged in conduct and transactions freed from the constraints of the Bankruptcy Code (getting the benefit of the dismissal), that there has been a mistake, as opposed to an intentional decision to proceed with the dismissal of the case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Set Aside Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxx.

22. 10-53637-E-13 G./KATHLEEN ULBERG MOTION FOR ENTRY OF DISCHARGE
JGD-11 John G. Downing 7-7-15 [224]

DEBTOR DISMISSED:
12/04/2014
JOINT DEBTOR DISMISSED:
12/04/2014

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Entry of Discharge is denied.

Wendell and Kathleen Ulberg ("Debtor") filed the instant Motion to Enter Discharge on July 7, 2015. Dckt. 224. The Debtor is requesting for an entry of discharge pursuant to 11 U.S.C. § 1328(a) on the grounds that the creditors have been paid in full under the terms of the operative Chapter 13 plan.

After a review of the underlying bankruptcy case and the adversarial proceedings, the Debtor states that the Debtor has paid $106,027.00 to the Chapter 13 Trustee. According to the Debtor's calculation, the Debtor asserts that this should have been more than sufficient to pay the total of $97,195.00 required to be paid to the creditors as follows:

1. Pay Pacific Crest Partners, Inc. $73,574.00 ($78,000.00 less the Trustee fees),

2. Pay the two secured creditors plus interest (IRS ($17,158.00)) and Wells Fargo Auto ($5,026.00)

3. The Internal Revenue Service priority claim ($690.51); and

4. Pay $1,437 to the general unsecured creditors (8% of $17,955.27).

The Debtor states that they have filed their 11 U.S.C. § 1328 Certificates and have completed their financial management classes.. Dckt. 216, 217, 222, and 223.

APPLICABLE LAW

In relevant part, 11 U.S.C. § 1328 states:

> (a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt--
>
> (1) provided for under section 1322(b)(5);
>
> (2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);
>
> (3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or
>
> (4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

Local Bankr. R. 5009-1 states, in relevant part:

Closing Procedures in Chapter 13 Cases

(a) Notice to Debtor of Completed Plan. When the chapter 13 trustee determines that the debtor has completed all payments required by the plan, the trustee shall file with the Court and serve on the debtor and the debtor's attorney Form EDC 5-200, Notice to Debtor of Completed Plan Payments and of Obligation to File Documents.

(b) Debtor Certifications to Obtain Discharge. No later than thirty (30) days after the date of a Notice to Debtor of Completed Plan Payments and of Obligation to File Documents, the debtor shall file with the Court and serve on the trustee Form EDC3-190, Debtor's 11 U.S.C. § 1328 Certificate, and, if applicable, Form EDC 3-191 and, Statement of Chapter 13 Debtor Regarding 11 U.S.C. § 522(q) Exemptions.

(c) Notice of Impending Chapter 13 Discharge. When the debtor has certified that (1) the debtor has completed an instructional course concerning personal financial management, (2) the debtor has not received a prior bankruptcy discharge within the time periods specified in 11 U.S.C. § 1328(f), (3) the debtor has paid all domestic support obligations, and (4) the debtor does not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot that exceed in the aggregate $146,450.00, or that exemptions in excess of $146,450.00 are reasonably necessary for the support of the debtor or the
debtor's dependents, the Clerk shall serve Form EDC 5-300, Notice of Intent to Enter Chapter 13 Discharge, on the trustee, the U.S. Trustee, the debtor, the debtor's attorney, all creditors, and persons requesting notice. The Clerk shall serve the Notice upon court approval of the trustee's final report and account.

DISCUSSION

The Debtor is improperly attempting to circumvent the procedures set forth in Local Bankr. R. 5009-1 for the court to enter a discharge. While the Debtor has filed their 11 U.S.C. § 1328 Certifications (Dckt. 216 and 217), the Clerk has not issued a Notice of Intent to Enter Chapter 13 Discharge. The Local Rules do not provide for a circumvented process for the Debtor to receive a discharge merely because the Debtor's own calculations have determined that all the necessary payments have made. In fact, the Debtor's case remains dismissed.

The Debtor's instant Motion is based on the premise that because all the secured creditors have been paid, that the Debtor can ask the court to let them out of the plan early. The Debtor does not attempt to file a modified plan, does not make a Motion for Hardship Discharge. Instead, the Debtor attempts to have the court not follow its own rules and enter discharge.

A review of the plan states that the unsecured creditors are to receive "no less than 8% dividend." As the language states, this is a minimum, not a

satisfaction. Merely because the Debtor has been able to negotiate and stipulate other values for secured claims does not mean that they should be given a discharge earlier to the detriment of the unsecured.

The bankruptcy case is dismissed and no Notice of Intent to Enter Chapter 13 Discharge has been entered as required by Local Bankr. R. 5008-1. Debtor has not completed the Plan and has not sought to obtain a hardship discharge.

The Motion is denied.

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 Discharge filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

23. 12-34737-E-13 TERESA NABER MOTION TO MODIFY PLAN
MET-1 Mary Ellen Terranella 6-8-15 [142]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2015. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

Teresa Naber ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 8, 2015. Dckt. 142.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 29, 2015. Dckt. 160. The Trustee objects on the following grounds:

1. The Debtor is delinquent $1,702.00 under the proposed plan.

2. The Debtor may have additional disposable income. The Debtor's Declaration (Dckt. 144) indicates Debtor receives $100.00 per month as payment for collecting rent on her cousin's rental property. Debtor's Schedule I does not include this income.

3. Section 2.06 of the proposed plan indicates that $0.00 were paid in attorney's fees prior to the filing of the case and that $3,000.00 is to be paid through the plan. Section 2.07 provides for a monthly dividend of $350.00 for administrative expenses. Section 6 of the additional provisions states that "Class 2 secured claim of Internal Revenue Service shall be paid after payment of attorney's fees."

   Attorney's fees under the confirmed plan are $0.00 per Debtor's first attorney's (John Tosney) Amended Disclosure of Compensation of Attorney (Dckt. 25), and the Order confirming. Debtor filed a Substitution of Attorney on June 5, 2014, substituting Peter Macaluso for Aaron Koenig, which was granted on June 10, 2014. Dckt. 76. Debtor filed another Substitution of Attorney on April 20, 2015 substituting Mary Ellen Terranella for Mr. Macaluso, which was granted on April 22, 2015. Dckt. 137.

   The Trustee believes Section 2.06 should reflect information as it relates to the original attorney's fees and any additional fees should be included in the additional provisions and a motion filed for court approval.

DEBTOR'S REPLY

The Debtor filed a reply on July 14, 2015. Dckt. 165. The Debtor states that the Debtor has paid $1,640.00 on June 25, 2015 and $62.00 on July 2, 2015, totaling $1,702.00. Debtor believes that her June 25, 2015 payment in the amount of $1,640.00 had not yet been received by the Trustee when the Trustee filed his opposition.

The Debtor also states that the Debtor has forwarded to the Trustee a proposed Order Modifying Plan, which the order provides for the various attorneys fees of the several law firms which have represented Debtor during her Chapter 13 plan. Dckt 166, Exhibit B.

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is $1,702.00 delinquent in plan payments. However, the Debtor has provided evidence that the Debtor has brought the delinquency current. Therefore, the first objection is overruled.

As to the Trustee's third objection, the Debtor's proposed order confirming addresses the Trustee's concerns on the attorneys' fees paid through the case so far, providing an accurate explanation of the payments made to the attorneys who have represented the Debtor to date. Therefore, the Trustee's third objection is overruled.

However, the Trustee's second objection remains unresolved. The Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

The Debtor states in her declaration that she earns an additional $100.00 per month from her cousin that she has failed to list as income on her schedules. The Debtor, therefore, is not providing for all of her disposable income to the plan. Thus, the court may not approve the plan.

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

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

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

24. 09-44339-E-13 GLEN PADAYACHEE **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
14-2282 **9-30-14 [1]**
PADAYACHEE V. TERRY, III

Final Ruling: No appearance at the July 21, 2015 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 9/30/14
Answer: 10/31/14

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is continued to 1:30 p.m. on August 13, 2015, to be conducted in conjunction with the Motion for Prevailing Party Attorneys' Fees in this Adversary Proceeding

Notes:

Continued from 1/21/15

Substitution of Attorney [for Defendant/Creditor Thomas J. Terry, III] filed 4/2/15 [Dckt 26]

[PLC-1] Order denying motion for summary judgment filed 4/14/15 [Dckt 39]

[PLC-2] Order granting motion for summary judgment filed 6/5/15 [Dckt 57]; Judgment entered 6/30/15 [Dckt 69]

[PLC-3] Motion for Attorney's Fees After Summary Judgment filed 6/29/15 [Dckt 63], set for hearing 8/13/15 at 1:30 p.m.

Defendant's Status Conference Statement filed 7/1/15 [Dckt 71]

Plaintiff's Status Conference Statement filed 7/6/15 [Dckt 75]

25. 12-34546-E-13 PGM-8 | **KEITH/ZANETTA ROBINSON** | **Peter G. Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** | **6-22-15 [139]**

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Keith and Zanetta Robinson ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,816.76 at 2.000% for 250 months. The modification will include all months and arrearages that will be past due as of the modification effective date, which includes unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges. The modified principal amount will be $413,153.71. Out of this new principal, $130,353.71 will be forgiven and deducted from the unpaid principal balance, leaving a new principal balance of $282,800.00.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Keith and Zanetta Robinson 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 court authorizes Keith and Zanetta Robinson ("Debtor") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 8614 Lupone Court, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 142.

26. 14-28649-E-13 JSO-4 | **THOMAS/HEIDI CARTER** | **Jeffrey S. Ogilvie** | **MOTION TO VALUE COLLATERAL OF KEVIN M. HERZOG AND SHARON C. HERZOG, AS TRUSTEES OF THE HERZOG FAMILY REVOCABLE TRUST OF 2004**
6-11-15 [60]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Creditors, Chapter 13 Trustee, and Office of the United States Trustee on June 11, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Kevin M. Herzog and Sharon C. Herzog, as Trustees of the Herzog Family Revocable Trust of 2004 ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Thomas B. Carter and Heidi M. Carter ("Debtors") to value the secured claim of Kevin M. Herzog and Sharon C. Herzog, as Trustees of the Herzog Family Revocable Trust of 2004 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 26846 Aslan Road, Shingletown, California ("Property"). Debtor seeks to value the Property at a fair market value of $240,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $336,860.00. Creditor's second deed of trust secures a claim with a balance of approximately $42,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas B. Carter and Heidi M. Carter ("Debtors") having been presented to the

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Kevin M. Herzog and Sharon C. Herzog, as Trustees of the Herzog Family Revocable Trust of 2004 secured by a second in priority deed of trust recorded against the real property commonly known as 26486 Aslan Road, Shingletown, 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 $240,000.00 and is encumbered by senior liens securing claims in the amount of $336,860.00, which exceed the value of the Property which is subject to Creditor's lien.

27. 15-20352-E-13 GREGORY/CLARICE BRIDGES MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 5-22-15 [47]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2015. By the court's calculation, 60 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 15-23853-E-13 APN-1 | **PETER/TAMARALEE HARBMAN** | **Cara M. O'Neill** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 5-28-15 [16]**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full amount of Creditor's secured claim. The Debtor appears to value the secured claim of Creditor where no Motion to Value has been filed. Additionally, the Creditor notes that its claim cannot be valued under 11 U.S.C. § 506(a) because the security interest is a vehicle that was purchased only 877 days prior to the filing of the case. Lastly, the Creditor states that the Debtor's plan fails to provide interest on the Creditor's claim.

The Creditor's objections are well-taken. 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

Here, the Debtor provides for the Creditor in the amount of $12,471.00. The Creditor asserts that the Debtor, in fact, owes $19,438.41. There is no Motion to Value pending in connection with the Creditor's secured claim and, as pointed out by the Creditor, it appears that the Creditor's cannot be valued under 11 U.S.C. § 506(a) pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a).

Therefore, because the Plan does not provide for the full payment of the Creditor's secured claim, 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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

29. 15-23853-E-13 DPC-1 | PETER/TAMARALEE HARBMAN Cara M. O'Neill | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-16-15 [20]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 16, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on the Motion to Value the Collateral of Wells Fargo Bank. The Trustee notes that no such Motion has been filed.

The Trustee's objections are well-taken. A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Wells Fargo Bank. However, the Debtor has failed to file a Motion to Value the Collateral. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained

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.

30. 12-35654-E-13 RAC-5 — RICHARD/MARTA MARTINSON — Richard A. Chan — MOTION TO EMPLOY MICHAEL R. KELLY AS SPECIAL COUNSEL AND/OR MOTION FOR COMPENSATION FOR MICHAEL R. KELLY, SPECIAL COUNSEL(S) — 6-16-15 [74]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted and the contingent fee compensation approved.

Richard and Marta Martinson ("Debtor"), seeks to employ Special Counsel Law Offices of Miner & Kelly, LLP, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Counsel to assist the Debtor is asserting personal injury claims arising form an automobile accident.

The Debtor argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present personal injury claims.

Michael Kelly, an associate of Law Offices of Miner & Kelly, testifies that he is representing the Debtor in a personal injury claim arising from an automobile accident that occurred on June 15, 2010. Mr. Kelly testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the Motion on June 18, 2015.

A review of the case shows that the Debtor is attempting to file this nunc pro tunc, seeing that the underlying personal injury claim was settled and approved by the court.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the retroactive motion to employ Law Offices of Miner & Kelly as counsel for the Debtor on the terms and conditions set forth in the Agreement filed as Exhibit A, Dckt. 78.

The Debtor also requests authorization of compensation. While this is typically not permitted, in light of the fact that Counsel has already

performed the services, as evidenced by the court approved settlement between the Debtor and United States Automobile Association (Dckt. 71), the court in this instance will approve compensation in the amount of $35,000.00 in legal fees and $1,833.46. However, the court emphasizes that this is only being permitted in this limited instance where Counsel has successfully performed all necessary services and received approval of the settlement.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Debtor is authorized to employ Law Offices of Miner & Kelly as counsel for the Debtor on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 78.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to disburse $35,000.00 in legal fees and $1,833.46 in costs to Law Offices of Miner & Kelly, LLP from the settlement proceeds disbursed to the Trustee as provided in this court's order filed on June 4, 2015 (Dckt. 73).

31. 15-23558-E-13 DPC-1 STEVEN/SHERRY MORRIS

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-10-15 [17]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 10, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's income on Schedule I is incorrect. Debtor's Schedule I lists pension/retirement income in the amount of $1,926.90 and long term disability in the amount of $2,898.14. According to Debtor's testimony at the First Meeting of Creditors, the amount received from both sources has or will decrease.

The Trustee's objections are well-taken. The Debtor's Schedule I appears to not accurately reflect the Debtor's financial reality. At the Meeting of Creditors, the Debtor stated that his income from both the pension and

disability will or has already decreased. Without this income, the Debtor is unable to make necessary plan payments. 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.

32. 12-28361-E-13 JDP-6 — DOUGLAS/BARBARA STEINBERG — James D. Pitner — MOTION TO SUBSTITUTE BARBARA A. STEINBERG AS REPRESENTATIVE AND/OR MOTION TO EXCUSE DEBTOR FROM CERTIFICATE REQUIREMENTS 6-15-15 [68]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the

hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is granted.

Joint Debtor, Barbara Steinberg, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Douglas Steinberg. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1, Fed. R. Bankr. P. 7025, and Local Bankr. R. 1016-1.

The Debtor filed for relief under Chapter 13 on April 30, 2012. On July 26, 2012, the Debtor's Chapter 13 Plan was confirmed. Dckt. 48. On June 13, 2013, Debtor Douglas Steinberg passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on June 15, 2015. Dckt. 71. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

The Debtor also seeks for the waiver of the 11 U.S.C. §§ 1328 and 522(q) requirements for deceased Debtor Douglas Steinberg

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished,

then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

The present Motion requests that the court: (1) substitute Barbara Steinberg as the personal representative for the deceased Debtor in this bankruptcy case and (2) the court waive the certification requirements of 11 U.S.C. § 1328 and 522(q). Dckt. No other relief is requested.

The grounds stated with particularity upon which the requested relief is based in the Motion are:

A. The court is notified that the deceased Debtor Douglas Steinberg passed "during the pendency of bankruptcy case." FN.1.

FN.1. The term "bankruptcy case" is not a defined term. The Motion does state with particularity that it is "this bankruptcy case," "the instant bankruptcy case," or "bankruptcy case 12-28461." The Motion does not state with particularity the date the deceased Debtor passed away. Rather, it instructs the court that the certificate of death is filed as Exhibit A. Possibly it is that the court can relatively "simply" discover that date from the Exhibit. However, it would be even more simple for Movant to state with particularity that essential information in the Motion.

B. Barbara Steinberg is the surviving wife and heir of the deceased Debtor. FN.2.

FN.2. The Motion does not state that Barbara Steinberg, as the surviving spouse, has now acceded to all rights and interests in what had formerly been community property. Rather, it states that she is an "heir," which is something different than an "heir" who acquires property through probate. Also, it does not state that she is the "sole heir," which could be read to mean that there are competing heirs.

According to California community property law:

> Thus, under Prob.C. 13500, all community property left in fee to the surviving spouse will normally pass without administration, subject to liability for debtors (Prob.C. 13500 et seq. . . . Where community property is held with right of survivorship, the property passes to the survivor "without administration, pursuant to the terms of the instrument, subject to the same procedures, as property held in joint tenancy."

11 Witkin, Summary 10th (2005) Com Prop, § 251, p. 870.

The Probate Code defines "heir" as: "Heir" means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code. Cal. Prob. Code § 44. The Probate Code defines "surviving spouse" as:

> "Surviving spouse" does not include any of the following:
>
> (a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.
>
> (b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.
>
> (c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights

Cal. Prob. Code § 78 (West)

C. Barbara Steinberg be appointed the personal representative in this bankruptcy case for the deceased Debtor.

D. That the deceased Debtor be excused from the certifications required by 11 U.S.C. § 522(q).

E. That the deceased Debtor and the personal representative be excused from the certification required by 11 U.S.C. § 1328.

Id.

Here, Barbara Steinberg has provided sufficient evidence that she could served as the personal representative for the deceased Debtor. While the Motion could be viewed as fatally defective, in light of the circumstances the court will look beyond the Motion (in this case only). On Schedule A the only real property of Debtors is stated to be community property. Dckt. 1 at 12. Schedule B does not designate whether the personal property of Debtors was separate, community, or joint property. However, there is only a modest amount of personal property listed on Schedule B. *Id.*

Based on the evidence provided, the court determines that Barbara Steinberg, as the surviving spouse of the deceased Debtor shall be appointed as the personal representative in this bankruptcy case for the Deceased Debtor.

Debtor Douglas Steinberg died before being able to satisfy the 11 U.S.C. § 1328 requirement to certify that domestic support obligations have been paid, to the extent owed, or that no such obligations exist. However, there is no reason to waive the requirement that his personal representative provide such certification in this case. If such obligations existed, they are required to have been paid as a condition of the deceased Debtor obtaining a discharge.

Further, the Motion seeks a waiver of the certification that the deceased Debtor has not claimed an exemption in excess of the amounts permitted under 11 U.S.C. § 522(q). No grounds have been shown as to why the personal representative of the deceased Debtor cannot, and should not, provide such certifications as a condition of a discharge being obtained for the deceased Debtor. Such is well within the ability of a personal representative of the Debtor.

While the Motion requests the substitution of a representative for the deceased debtor and the waiver of certain post-petition education requirements, the surviving Debtor has not requested that the court authorize the continuation administration of the case pursuant to Federal Rule of Bankruptcy Procedure 1016. While the appointment of a personal representative to succeed to assert and defend the rights and interests of a deceased Debtor may be appropriate, that does not mean that the court merely pushes through a paper authorizing the continued administration of the bankruptcy case as to the deceased debtor.

For this case only, the court infers from the Motion that Movant also seeks to obtain an order authorizing the continued administration of this Chapter 13 case for the deceased Debtor. From the files in this case, such grounds could include:

A. The current case was filed on April 30, 2012.

B. The Amended Chapter 13 Plan was confirmed on July 26, 2012. Order, Dckt. 48.

C. The Amended Chapter 13 Plan provided for only modest $62 a month payments for thirty-six months. Dckt. 30.

D. The Amended Chapter 13 Plan provides for making no payments to creditors, and only to pay administrative expenses to the Trustee and Debtor's counsel. *Id.*

E. The Plan provides for paying claims secured by junior liens on Debtor's residence $0.00 on their 11 U.S.C. § 506(a) secured claims (valuing for a lien strip). *Id.*

F. The income for the surviving Debtor and the deceased Debtor was $3,570.00 a month gross, with it being derived from Social Security Benefits ($1,926 combined for both Debtors), pension for the deceased Debtor ($1,144), and support from daughter ($500). Schedule I, Dckt. 1 at 29.

G. Debtor's monthly expenses were ($3,507). Schedule J, *Id.* at 29.

H. Debtor did not have income from other sources. Statement of Financial Affairs, *Id.* at 31-32.

I. Debtor has been able to complete the Plan, notwithstanding the death of the deceased Debtor on May June, 2013, just thirteen months after the commencement of this case. Notice of Plan Completion and Trustee's Final Report, Dckts. 57 and 84. FN.3.

FN.3. It appears that the Trustee had no issue with the finances of this case and the source of income to fund the plan following the death of the deceased Debtor (who was the source of more than 50% of the gross family income. The surviving Debtor funded twenty-three months of this plan from some other source.

The court also orders that this Chapter 13 case shall continue to be administered as a Chapter case for the deceased Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Barbara Steinberg is substituted as the successor-in-interest to Douglas Steinberg.
>
> **IT IS FURTHER ORDERED** that this case shall continue to be administered as a Chapter 13 case for the deceased Debtor Douglas Steinberg pursuant to Federal Rule of Bankruptcy Procedure 1016.
>
> **IT IS FURTHER ORDERED** that all other requested relief is denied, including the request to waive the certification requirements pursuant to 11 U.S.C. § 1328 and the 11 U.S.C. § 522(q) exemption, which certifications may be provided by the personal representative for the deceased Debtor appointed in this case.

33. 15-23662-E-13 DPC-1 | **JUAN FLORES** / **Marc A. Caraska** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-16-15 [37]**

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 16, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the First Meeting of Creditors on June 11, 2015. The Meeting has been continued to August 6, 2015.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his federal income tax return.

3. The Debtor failed to provide the Trustee with Business Documents including: questionnaire, 2 years of tax returns, profit and loss

statements, bank account statements, proof of license and insurance or written statement of no such documentation exists. The Debtor provided the Trustee with one bank statement and one month's profit and loss statement one day prior to the Meeting of Creditors.

4. The Debtor does not disclose his interest in the business on Schedule B. The Debtor reports that he is self-employed at El Ricon Restaurant.

5. The Debtor failed to file a Business Budget detailing the business income and expenses.

6. The Debtor fails to report his business name, El Ricon Restaurant, on his petition as an alternative name.

The Trustee's objections are well-taken.

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

Next, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). This is an independent ground to deny confirmation.

As to the Trustee's third and fifth objection, the Debtor has failed to timely provide the Trustee with business documents including: questionnaire, 2 years of tax returns, profit and loss statements, bank account statements, proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Lastly, the Trustee's remaining objections deal with the Debtor failing to accurately list and disclose his interest in El Ricon Restaurant. This appears to be the Debtor's primary source. The failure of the Debtor to list the business as an asset or as an alternative name raises concerns over whether the proposed plan and schedules paint an accurate depiction of the Debtor's financial reality. The incompleteness of the Debtor's schedule makes it impossible for the court or other parties to determine the feasibility and viability of the plan.

Therefore, 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.

34. 15-24065-E-13 DPC-1 | MAURICE CARR Pro se | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-23-15 [16]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 16, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the First Meeting of Creditors on June 18, 2015. The Meeting has been continued to July 16, 2015.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his federal income tax return.

3. The Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing.

4. The Debtor has failed to file the standard Chapter 13 Plan and is using a form from the Central District of California.

5. Debtor has not paid all necessary installment fees pursuant to the Order Approving Payments of Filing Fees in Installments.

6. The Debtor's Schedule A is incomplete and fails to list the amount of the secured claim against Debtor's residential property.

OPPOSITION

Debtor states that he contacted the Chapter 13 Trustee requesting that the First Meeting of Creditors be continued due to Debtor's illness. Dckt. 25. Debtor argues in the Opposition that: (1) He has not had to file tax returns since 2012 due to his source of income; (2) Debtor has made the scheduled installment filing fee payments; (3) Debtor has now filed an amended Chapter 13 Plan; and (4) filed a corrected Schedule A. Debtor, appearing in pro se, has not filed a declaration in support, but has directed the court to the court's file for documents upon which items (2), (3), and (4) are based.

CHAPTER 13 TRUSTEE'S RESPONSE

The Trustee responds that it the Trustee's Office was not contacted by Debtor concerning the First Meeting of Creditors. Response and Declaration, Dckts. 27 and 28. The Trustee also responds that the most recent pre-petition tax return must be provided, not merely for the current year. The Trustee acknowledges that an amended plan has been filed, but asserts that ti has not been properly served.

DISCUSSION

The Trustee's objections are well-taken. Further, Debtor, in filing an Amended Plan (Dckt. 26) is no longer prosecuting the former plan. The Objection to the former plan is sustained. Whether a plan should be confirmed will be addressed at a hearing on a motion to confirm any such amended plan presented to the court, creditors, and other parties in interest.

The Trustee is correct, while an Amended Plan has been filed, no motion to confirm and supporting pleadings have been filed. The Amended Plan, any motion to confirm, and the supporting pleadings have not been served and a motion set for hearing.

Therefore, 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.

35. 15-23668-E-13 DPC-1 JUAN/GENEVA GOMEZ Mary Ellen Terranella OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-10-15 [21]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 10, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan exceeds the maximum 60 months allowed. According to the Trustee's calculations, the Plan will complete in 69 months. The Trustee argues that the cause is Proof of Claim No. 4, filed by the Internal Revenue Service, in the amount of $134,565.45. The secured portion of the claim is $15,630.00 and the unsecured priority portion of the claim is $90,702.19. The Debtor scheduled the Internal Revenue Service in Class 3A in the amount of $1.00 and scheduled the creditor in Class 5 in the amount of $88,154.00. The secured portion of the claim is $15,629.00 higher than the amount scheduled. The priority portion of the claim is $2,548.19 higher than the amount scheduled by the Debtor.

The Trustee's objections are well-taken. A review of the plan shows that the Debtor's plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 69 months due to the improper scheduling of the Internal Revenue Service's claim based on Proof of Claim No. 4. A review of the plan and the Proof of Claim shows that the Debtor has not sufficiently provided for the Internal Revenue Service's claim. Based on these amounts, the plan exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

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.

36. 15-23668-E-13 SW-1 — JUAN/GENEVA GOMEZ — Mary Ellen Terranella — OBJECTION TO CONFIRMATION OF PLAN BY ALLY FINANCIAL SERVICE — 5-20-15 [16]

Final Ruling: No appearance at the July 21 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 20, 2015. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. However, the parties have filed a Stipulation to have the objection overruled, the Debtor agreeing to amend the plan to provide for creditor's claim. The court has previously entered an order removing this matter from the calendar.

The court's decision is to remove the Objection to Confirmation from the Calendar. See Order, Dckt. 31.

Ally Financial Serviced by Ally Servicing LLC ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan fails to provide for the present value of the Creditor's claim by the Debtor improperly attempting to value the collateral. Also, the Creditor objects on the ground that the proposed plan does not provide an interest rate that provides for the present value of the Creditor's claim.

STIPULATION

On July 10, 2015, the parties filed a Stipulation. Dckt. 29. The Stipulation provides that the Debtor shall provide for Creditor's claim as to the Vehicle to be fully secured in the amount of $13,684.20, which shall be paid at 5.00% interest. These terms shall be incorporated into an Amended Plan, or in the alternative, in the Order Confirming.

DISCUSSION

In light of the Stipulation, the Creditor's objection is resolved and the objection in overruled. Whether such terms are part of a confirmed plan will be addressed in connection with confirmation of the plan. Sustaining the objection does not "pre-confirm" a piece-meal plan term. The court has tentatively denied confirmation of the current plan based on the objection of the Chapter 13 Trustee.

37. 15-22069-E-13 KARA MORA
DPC-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-29-15 [30]

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 April 29, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Opposition has been filed by Debtor.

The court's decision is to overrule the Objection.

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

1. The Debtor failed to appear at the First Meeting of Creditors on April 23, 2015. The Trustee notes that Debtor's counsel appeared and stated that the Debtor was not present due to medical reasons. The Meeting was continued to May 21, 2015.

2. The Debtor proposes to value the secured claim of Toyota Financial Services on a 2010 Toyota Camry but has failed to file a Motion to date.

3. Section 2.06 of Debtor's plan indicates that the Debtor paid $50.00 in attorney fees prior to the filing of the case. The Statement of Financial Affairs indicates the Debtor paid $500.00 on January 21, 2013 and $1,000.00 on March 13, 2015. The Disclosure of Compensation and the Rights and Responsibilities all indicate that the Debtor paid $1,000. The Trustee does not oppose clarifying this in the order confirming.

DEBTOR'S REPLY

The Debtor filed a reply on May 19, 2015. Dckt. 38. The Debtor states that she was unable to attend the Meeting of Creditors due to giving birth. The Debtor further states that Motion to Value is set for hearing on June 2, 2015. Lastly, the Debtor states that she paid the attorney $1,000.00 prior to filing and will remedy the attorney fees issue in the order confirming.

JUNE 2, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on July 21, 2015 to be heard in conjunction with the Motion to Value Collateral of Toyota Financial Services. Dckt. 44.

ORDER ON STIPULATION

On June 19, 2015, the parties filed a Stipulation. Dckt. 50. On June 22, 2015, the court issued an Order on Stipulation on Debtor's Motion to Value Collateral of Toyota Motor Credit Corporation. Dckt. 51. The Order stated:

> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Toyota Motor Credit Corporation ("Creditor") secured by a lien against a vehicle identified as a 2010 Toyota Camry (VIN ending in 5731, is determined to be a secured claim in the amount of $9,000.00, 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 $9,000.00 and is encumbered by a lien securing Creditor's claim which exceeds the value of the Property which is subject to Creditor's lien.

DISCUSSION

As to the Trustee's first objection, the Debtor appeared at both the continued Meeting of Creditors on May 21, 2015 and at the further continued Meeting on May 28, 2015. Therefore, the Trustee's first objection is overruled.

As to the Trustee's second objection, the parties have stipulated and the court has so ordered that the value of the Creditor's secured claim is $9,000.00. This satisfies the Trustee's second objection and is therefore overruled.

Lastly, the Trustee's third objection appears to be a scrivener's error as to the actual amount of attorneys' fees paid in connection with the instant case. The Debtor can correct this error in the order confirming, properly stating the amount of fees paid prior and what fees remain to be paid. Therefore, after correcting the error in the order confirming, the third objection is overruled.

Therefore, the Plan, after correcting the amount of attorneys' fees paid prior to filing and what the remaining fees to be paid through the plan in the order confirming, does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overrule and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on March 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 15-23469-E-13 DPC-1 | **TERESA/WELDON PILLOW** Nima S. Vokshori | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 6-16-15 [37]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 16, 2015. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Trustee is not certain if the plan complies with 11 U.S.C. § 329(a). The Debtor's plan indicates that attorney fees paid prior to filing are $0.00 and indicated that $4,000.00 shall be paid as a "no look" fee through the plan. In addition, the Disclosure of Compensation of Attorney for Debtor and their Rights and Responsibilities report that Debtor paid $0.00 to their attorney prior to filing and have a balance of $4,000.00. On their Statement of Financial Affairs, Debtor reports paying $500.00 to the Vokshori

Law Group prior to filing for "costs." The Trustee argues that this is in conflict with the other documents filed in the case. Debtor also indicated that they paid their counsel $1,000.00 prior to the filing for work on loan modification but it is not reported in the schedules.

2. The Debtor's plan relies on a Motion to Value the Secured Claim of Green Tree Servicing which is scheduled for hearing on July 21, 2015.

3. The Trustee is not certain if the plan complies with applicable law or if the plan pays the claims as proposed. Debtor lists Green Tree Servicing in Class 1 of the plan and report $9,879.00 in arrearages owed to the claimant. Debtor fails to propose a monthly dividend to be paid to the ongoing mortgage through the plan. Debtor lists on Schedule J an expense for rent/mortgage of $598.00. It appears that the Debtor has the mortgage arrears in Class 1 but propose to pay the ongoing mortgage directly, which conflicts with the terms in Class 1 of the plan.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on June 25, 2015. Dckt. 52. The Debtor filed a Motion to Amend Plan and an amended plan on June 10, 2015. Dckt. 32 and 35.

DISCUSSION

In light of the Debtor filing an amended plan and a Motion to Confirm the Amended Plan set for hearing on July 28, 2015, the court construes such filing as a de facto withdrawal of the original plan. As such, the objection is sustained and the Plan filed on April 29, 2015 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 filed on April 29, 2015 is not confirmed.

39. 15-23469-E-13 TERESA/WELDON PILLOW MOTION TO DISGORGE FEES
DPC-2 Nima S. Vokshori 6-23-15 [48]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Disgorge Fees is denied without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Disgorge Attorney Fees on June 23, 2015. Dckt. 48. The Trustee seeks to have attorneys' fees disgorged by The Vokshori Law Group ("Debtor's Counsel").

The Trustee states that the Debtor's plan indicates that attorney fees paid prior to filing are $0.00 and indicates that $4,000.00 shall be paid as a "no look fee" through the Chapter 13 Plan. In addition, the Disclosure of Compensation of Attorney for Debtors (Dckt. 1) and their Rights and Responsibilities (Dckt. 6) report that Debtor paid $0.00 to their attorney prior to filing and have a balance of $4,000.00.

The Trustee points to the Statement of Financial Affairs # 9 (Dckt. 1), where the Debtor reports paying $500.00 to The Vokshori Law Group prior to filing for "costs." The Trustee argues this is conflict with the other documents.

The Trustee states that at the Meeting of Creditors, the Debtor admitted that they paid their counsel $500.00 in attorney fees prior to filing. The Debtor also indicated that they paid their counsel $1,000.00 prior to the filing for work on a loan modification.

The Debtor filed an amended Statement of Financial Affairs (Dckt. 43) adding the $1,000.00 in attorney fees paid for a loan modification.

The Trustee argues that the $1,000.00 payment is in conflict with California Civil Code § 2944.8(d). The Trustee requests that the court grant an order disgorging the attorney fees in this case.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the Motion on July 2, 2015. Dckt. 56. The Debtor states that the $500.00 was paid for costs which was paid prior to filing. The Debtor asserts that all of the papers filed consistently state that the Debtor agreed to $4,000.00 in legal fees and $500.00 for costs. The Debtor's counsel asserts that the disclosure of the $500.00 as legal fees at the Meeting of Creditors was a misstatement by the Debtor and was meant to be for the costs.

As to the $1,000.00 for the loan modification, Debtor's counsel asserts that it was permitted under California Civil Code § 2944.7(a)(1) because compensation received occurred only after Vokshori Law Group "fully performed each and ever service the person contracted to perform or represented that he or she would perform.

Debtor's counsel asserts that the Debtor was only billed after their loan modification application was denied on December 23, 2014 and their subsequent appeal was denied in March 2015. Debtor's counsel asserts that the payment was made on March 18, 2015, after the final denial of the appeal of the loan modification.

The Debtor requests that the Trustee's Motion be denied.

APPLICABLE LAW

This court has the authority, and responsibility, to consider attorneys' fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. § 329, 330, 331. Fees in excess of the reasonable value of such services may be ordered repaid. The application of 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure, may seem harsh, but are necessary to not only protect vulnerable consumers and business owners, but to protect the integrity of the federal judicial process. See *Neben & Starrett v. Chartwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. Cal. 1995). Debtor's counsel must lay bare all its dealings regarding compensation and must be direct and comprehensive. See *In re Bob's Supermarket's, Inc.*, 146 Bankr. 20, 25 (Bankr. D. Mont. 1992) aff'd in part and rev'd in part, 165 Bankr. 339 (Bankr. 9th Cir. 1993). The burden is on the person to be employed to come forward and make full, candid, and complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

Cal.Civ.Code § 2944.7

California Civil Code § 2944.7 provides for the following:

(a) Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) In addition to the penalties and remedies provided by Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, a person who violates this section shall be liable for a civil penalty not to exceed twenty thousand dollars ($20,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving a violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(d) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a

nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

(3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Cal.Civ.Code § 2944.8

California Civil Code § 2944.8 provides for the following:

(a) In addition to any liability for a civil penalty pursuant to Section 2944.7, if a person violates Section 2944.7 with respect to a victim who is a senior citizen or a disabled person, the violator may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action.

(b) As used in this section, the following terms have the following meanings:

(1) “Disabled person” means a person who has a physical or mental disability, as defined in Sections 12926 and 12926.1 of the Government Code.

(2) “Senior citizen” means a person who is 65 years of age or older.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income, substantial loss of property set aside for retirement, or for personal or family care and maintenance, or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of Section 2944.7.

DISCUSSION

In what should be a routine process, with clear disclosures, this Motion has created significant controversy. In considering these issues the court makes several initial comments. First, Debtor's Attorney who was paid the $1,000.00 in fees has not presented a declaration for the services provided and what transpired. Rather, the "Operations Manager" for Vokshori Law Group, APLC, Shawn Collins provides a declaration. Dckt. 57. Collins testifies that Debtor were billed and made payment of $1,000.00 on March 18, 2015, after the loan modification and appeal had been denied. No copies of the billings or documentation of the payment have been provided.

Collins further testifies that in October 2014, a loan modification application was submitted to Green Tree Servicing, LLC. Further, that a workout package was received by Vokshori Law in November 2014. Then, in November and December 2014 several "document requests" were made by Green Tree Services, LLC and the documents were obtained from the Debtors. Collins concludes the testimony informing the court that the Loan Application and the appeal were both denied.

The problem with the Declaration is that it says too much, with an "Office Manager" providing testimony under penalty of perjury as to what legal services were provided, the communications with Green Tree Servicing, LLC and the results of the legal services. This creates the appearance of a declaration drafted to appear facially adequate, but one created out of whole-cloth by someone with no personal knowledge of what occurred.

The credibility of the response is further eroded by the "leaking of information" provided by Debtor and Debtor's Counsel.

Considering the prior documents filed with the court, the statements under penalty of perjury begin with Debtor stating under penalty of perjury that nothing was paid to Debtor's Counsel prior to the commencement of the bankruptcy case. Disclosure of Compensation of Attorney for Debtors (Dckt. 1) and their Rights and Responsibilities (Dckt. 6). This is corroborated in the proposed plan. Dckt. 5. One plausible explanation could be that this was part of a human error which pervaded the initial filings in this case. Human being prepared the documents and human being make errors.

But at the same time the Statement of Financial Affairs was prepared and in this part it states that $500.00 had been paid to Debtor's Counsel. Dckt. 1. Debtor and Debtor's Counsel carefully read all of these documents before signing them under penalty of perjury and Rule 9011 and signed them so this bankruptcy case could be filed. The internal inconsistency of these statements is obvious, if Debtor and Debtor's Counsel actually read the documents before signing them and having them filed with the court.

At the First Meeting of Creditors Debtor confirmed making the $500.00 payment. Debtor also disclosed that the additional $1,000.00 in fees had been paid to Debtor's Counsel prior to the commencement of the bankruptcy case. The First Meeting of Creditors was conducted on June 15, 2015. On June 19, 2015, the Amended Statement of Financial Affairs was filed disclosing all of the pre-petition payments made to Debtor's Counsel. Dckt. 43.

The Trustee, Debtor, and Debtor's Counsel have suffered from the serial disclosure of accurate information. The court concludes that the present motion to disgorge is denied without prejudice, since it is based on (1) the failure to disclose and (2) that the therefore undisclosed payment was prior to the services completed. The court does not know whether the later occurred and the prior has been addressed.

The real issue appears to be whether the fees paid were appropriate and what fees should ultimately be allowed in this case. As discussed above, the "personal knowledge testimony" of the Office Manager does not provide substantial, credible testimony of what actual services were provided, who provided them, and if they were reasonable. The court notes that Debtor's Counsel has been challenged in other cases in requesting fees in other cases in the District. See *In re Munson*, 13-27668, in which the Hon. Michael S. McManus denied Debtor's Counsel request for substantial and unanticipated legal fees. The court's findings in *Munson* include:

A. "First, among the charges that counsel for the debtor seeks to have paid, are charges incurred during the period January 30, 2013 to May 30, 2013. These dates predate the filing of this case. Therefore, they do not represent fees and costs entitled to payment as administrative expenses. See 11 U.S.C. § 503(b)(1)(A)(I)."

B. "Second, many if not most of the charges reported on the contemporaneous time records are for work by 'legal support.' Review of these charges indicates they are for clerical and secretarial services, not professional services. Such services as 'retrieving PACER documents,' 'saving' documents, telephone calls concerning receipt of documents, are being billed. To the extent these and the other charges by legal support personnel are for professional services cannot be ascertained from the time records."

C. "Further, a review of the docket reveals that $5,287.50 out of $6,270 of the time billed is for services prior to confirmation of a plan. Yet, the motion fails to give the explanation required by Local Bankruptcy Rule 2016-1(c)(3): this 'fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial

> and unanticipated post-confirmation work is necessary should counsel request additional compensation.' There is no proof that substantial and unanticipated services were required in this case and nothing on the docket suggests that such services were rendered."

13-27668; Civil Minutes, Dckt. 61.

In the present case the pending motion to confirm caught the opposition of the Chapter 13 Trustee for a very basic defect – the failure of Debtor to provide any testimony in support of that motion. Rather, a declaration was prepared for Debtor's Counsel in which Counsel chose to potentially waive the attorney-client privilege and transform into a percipient witness. This basic shortcoming raises further questions as to the credibility of what has been filed in this case and services provided.

The Chapter 13 Trustee was correct to file the present Motion. Debtor has provided some response, from which further information appears necessary and there may be broader issues. But those possible issues, if any at all need to be addressed, will be properly presented to the court rather than arising piecemeal from this rather simple Motion.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Disgorge Fees filed by 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 denied without prejudice.

40. 15-23469-E-13 NSV-1 | **TERESA/WELDON PILLOW** Nima S. Vokshori | **MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.** 6-10-15 [23]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of U.S. Bank, N.A., as Trustee for CV1 Loan GT Trust I ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Teresa and Weldon Pillow ("Debtor") to value the secured claim of U.S. Bank, N.A., as Trustee for CV1 Loan GT Trust I ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1895 Grand Avenue, Oroville, California ("Property"). Debtor seeks to value the Property at a fair market value of $80,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $118,992.69. Creditor's second deed of trust secures a claim with a balance of approximately $14,347.43. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Teresa and Weldon Pillow("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 U.S. Bank, N.A., as Trustee for CV1 Loan GT Trust I secured by a second in priority deed of trust recorded against the real property commonly known as 1895 Grand Avenue, 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 $80,000.00 and is encumbered by senior liens

securing claims in the amount of $118,992.69, which exceed the value of the Property which is subject to Creditor's lien.

41. 15-23769-E-13 KK-1 — CORY LEE COLEMAN — Peter L. Cianchetta — OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A. — 5-27-15 [24]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 27, 2015. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

JPMorgan Chase Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the Debtor's plan understates the pre-petition arrearage owed to Creditor. The Creditor states that the pre-petition arrearage owed is approximately $17,258.32.

The Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts $17,258.32 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

42. 14-27870-E-13 LATANYA MOORE — MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria — 6-4-15 [50]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

Latanya Moore ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 4, 2015. Dckt. 50.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 29, 2015. Dckt. 61. The Trustee objects on the following grounds:

1. The Debtor is delinquent $715.00 under the proposed plan.

2. The Debtor's proposed plan proposes to reclassify Exeter Finance Corp regarding a 2012 Nissan Altima from a Class 2 secured claim to a Class 3 surrender without authorizing interest payments made by the Trustee. Section 6 authorizes $1,000.31 in principal payments, but does not authorize interest payments of $558.15.

3. Debtors proposed plan does not specify a plan payment for April and May, 2015. Section 6 proposes a plan payment of $5,120.00 thru March 27, 2015, then $715.00 beginning June 25, 2015 for the remainder of the plan, but does not indicate what the payment is for April and May.

DISCUSSION

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

The Trustee's objections are well-taken. While the objections concerning the interest authorization for Exeter Finance Corp and plan payments for April and May, 2015 could be corrected in the order confirming, the Debtor's delinquency is a ground to deny confirmation.

According to the Trustee, under the proposed plan, $5,835.00 have become due. However, the Debtor has only paid a total of $5,120.00 to the Trustee. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

43. 14-29670-E-13 CHERRONE PETERSON MOTION TO APPROVE LOAN
PGM-4 Peter G. Macaluso MODIFICATION
6-18-15 [127]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Cherrone Peterson ("Debtor") seeks court approval for Debtor to incur post-petition credit. The Debtor asserts that Ocwen Loan Servicing, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $2,112.00, where the monthly escrow payment will adjust annually. The interest rate will be 2.000% and the number of monthly payments will be 243.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on July 7, 2015.

DEUTSCHE BANK NATIONAL TRUST COMPANY'S REPLY

Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-W3 ("Creditor") filed a reply on July 10, 2015. Dckt. 139. The Creditor state that it is the owner of the loan at issue and the Ocwen is the servicer of the loan. The Creditor states that Ocwen is authorized and empowered to enter into and execute a loan modification agreement on behalf of the Creditor pursuant to the Pooling and Servicing Agreement. Attached to the reply, the Creditor attached a interlineated modification agreement where the Creditor makes clear that Ocwen, in modifying the loan at issue, is acting in its capacity as servicer for the Creditor. Dckt. 142, Exhibit J.

DISCUSSION

The instant Motion concerns the court for several reasons. First, Debtor's counsel is a regularly practicing attorney in this court and is well aware of the importance of naming the actual creditor holding the Note and Deed of Trust when it comes to loan modifications. On numerous matters, Debtor's counsel has been put on notice that the court will not issue "maybe-effective" orders modifying a loan that improperly names the creditor. However, in the instant Motion, Debtor's attorney, in drafting the instant Motion, states "Ocwen Loan Servicing holds a deed of trust against the property which is secured by a Note." Dckt. 127, paragraph 4. Facially, counsel should have recognized that Ocwen Loan Servicing is not the actual holder.

In several prior cases this attorney (as well as other attorneys) have been faced with the situation where Ocwen Loan Servicing, LLC refuses to disclose the identity of the actual creditor – which could well appear to be part of a servicer-creditor scheme to shield the creditor from the court and effective orders against it. Such a scheme could be part of a complex, though improper, plan to allow creditor or assignees of creditor to disavow the effectiveness of bankruptcy plans, orders valuing secured claims, and the proceedings in federal court.

On July 6, 2015, Debtor filed a Motion for an order authorizing the 2004 Examination of Ocwen Loan Servicing, LLC. Dckt. 136. The Motion includes the following in the grounds stated with particularity (Fed. R. Bankr. P. 9013) in support of the Motion:

A. No proof of claim was filed by the creditor in this case or in the Debtor's prior Chapter 11 case or prior Chapter 7 case.

II. In this case Ocwen Loan Servicing, LLC filed an objection to confirmation, stating that it was the servicing company for creditor Deutsche Bank National Trust Company, Trustee.

III. Though stating that it was the servicing company for the creditor, in connection with the Loan Modification Ocwen Loan Servicing, LLC would not identify the creditor or provide the basis for entering into a loan modification with the Debtor.

IV. Ocwen Loan Servicing, LLC presented the loan modification as a contract between the Debtor and Ocwen Loan Servicing, LLC in its individual capacity, not as the agent for a principal.

Motion, Dckt. 136.

Creditor Deutsche Bank National Trust Company, as Trustee, has come forward and filed a reply brief providing the information and evidence that it is the creditor in this case. Further, that Ocwen Loan Servicing, LLC is not the creditor and I only authorized to enter into the loan modification as the agent of Deutsche Bank National trust Company, as Trustee.

> "Secured Creditor [Deutsche Bank National Trust Company, as Trustee] is the owner of the loan at issue. Ocwen Loan Servicing, LLC ("Ocwen") is the loan servicer for the Secured Creditor. Ocwen is authorized and empowered to enter into and execute a loan modification agreement on behalf of the Secured Creditor pursuant to the Pooling and Servicing Agreement governing the securitized trust that owns the subject loan."

Reply, Dckt. 139.

This is not the first time that a creditor has come in to "save the day" and disclose it is the creditor and Ocwen Loan Servicing, LLC is its agent authorized to enter into the Loan Modification as the creditor's agent. On several prior occasions Ocwen Loan Servicing, LLC has ignored court authorized 2004 exams, necessitating the consumer debtor having to file a motion to compel.

The response provided Deutsche Bank National Trust Company, as Trustee, is clear and straight forward. The court understands how service companies and collection agencies (whether assignment or non-assignment) work. A loan servicing company can, as the authorized agent, enter into a contract for its principal. As this court has addressed on multiple prior occasions, the law is clear and an agent executes the contract as the agent, disclosing the principal. The granting of a power of attorney does not give the agent the authority to misrepresent itself as the principal, hiding the identity of the principal.

While the court appreciates the responsiveness of Deutsche Bank National Trust Company, Ocwen Loan Servicing, LLC and its repeated conduct has convinced the court that it will be necessary to issue an order to show cause why the court should not enter an order requiring that Ocwen Loan Servicing, LLC disclose in all contracts, pleadings, and other disclosures that it is acting as an agent, identify the principal, and have all documents clearly state in all parts, including the signature blocks, that Ocwen Loan Servicing, LLC is the agent and disclose the identity of the principal.

Reviewing the terms of the modification, this post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to

fund that Plan. The modification allows for the Debtor to reduce the loan payments as well as the interest rate. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Cherrone Peterson 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 court authorizes Cherrone Peterson ("Debtor") to amend the terms of the loan with Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-W3, through Ocwen Loan Servicing, which is secured by the real property commonly known as 9345 Rocky Lane, Orangevale, California, on such terms as stated in the Modification Agreement filed as Exhibit J in support of the Motion, Dckt. 142.

44. 12-34572-E-13 DANIEL/SANDRA ROGERS CONTINUED MOTION TO MODIFY PLAN
EWV-62 Eric W. Vandermey 5-16-15 [30]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

Sandra Rogers ("Debtor") filed the instant Motion to Confirm the Modified Plan on May 16, 2015. Dckt. 30.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 41. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the proposed plan payments. The Debtor specify a plan payment of $1,887.00 in § 1.01. The Debtor's plan confirmed October 9, 2012 included step plan payment increases annually. The current payment under the

confirmed plan is $2,010.25. The Debtor has paid the Trustee a total of $61,668.00 through May 31, 2015. The Debtor did not clarify when the proposed plan payment of $1.887.00 was to commence.

2. The Debtor indicates in Section 6 that additional provisions are attached but none were attached.

3. The Debtor's Motion to Confirm does not comply with applicable law. The motion does not cite applicable code such as 11 U.S.C. § 1329 which is required under Local Bankr. R. 9014-1(d) and Fed. R. Bankr. P. 9013, and have a points and authorities filed with it stating the applicable law.

JUNE 30, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on July 21, 2015 for the Debtor to correct the language issues in the Amended Plan. Dckt. 44.

DEBTOR'S AMENDED PLAN

The Debtor filed an amended modified plan on July 16, 2015. Dckt. 45. The amended modified plan corrected the check box indicating that no additional provisions are attached. That is the only correction made.

DISCUSSION

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

While the Debtor filed a corrected the indication of any additional provisions, the Debtor has failed to provide clarification and authorization for the prior disbursements made by the Trustee. As the Trustee stated in his objection, the Debtor has paid $61,668.00. The amended modified plan continues to not have any information as to the authorization of prior payments nor when the new payments of $1,887.00 are meant to commence. Without this information, the plan remains incomplete and the court cannot determine whether the plan is feasible.

Furthermore, the Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely provides a narrative of why they are amending the plan and the changes made to the Debtor's budget. No where in the Motion does the Debtor describe the requirements of either 11 U.S.C. § 1325 or § 1329. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

The Debtor was given the opportunity to review and correct any procedural errors that the court and the Trustee highlighted at the initial hearing. However, the Debtor has failed to correct these issues, other than correcting that no additional provisions are appended. Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

45. 13-25172-E-13 RODNEY/MARSHA ROBINSON MOTION TO MODIFY PLAN
DJC-1 Diana J. Cavanaugh 6-5-15 [29]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 5, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

46.	**10-28775-E-13** **PGM-3**	**DENNIS BOWENS** **Peter G. Macaluso**	**MOTION TO WAIVE DEBTOR, DENNIS BOWENS' 11 U.S.C. § 1328 REQUIREMENT** **6-23-15 [63]**

Tentative Ruling: The Motion to Waive Debtor's 11 U.S.C. § 1328 Certification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Waive Debtor's 11 U.S.C. § 1328 Certificate has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Waive Debtor's 11 U.S.C. § 1328 Certificate is denied.

Debtor Sandra White-Bowens, substituted debtor for deceased Debtor Dennis Bowens, moves for an order waiving the requirement of Debtor's 11 U.S.C. § 1328 Certificate in granting a discharge to Dennis Bowens, now deceased. Debtor asserts that prior to his death, Dennis Bowens completed her Financial Management Course and filed the Certificate with the court, as well as making the final plan payment prior to his death. However, Debtor Dennis Bowens died

before being able to complete the Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374 (2007). This court can exercise it powers under 11 U.S.C. § 105(a) to "[i]ssue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Debtor Dennis Bowens died before being able to satisfy the 11 U.S.C. § 1328 requirement. The surviving Debtor, as the personal representative of the deceased Debtor, requests that the certifications required thereunder be waived. This certification is that there were no domestic support obligations which were owed, or if owed, have been paid as required by the Bankruptcy Code. The surviving Debtor, as the personal representative of the deceased Debtor, can provide that certification. The surviving Debtor does not provide any explanation, justification, or legal source as to why she, as the personal representative of the deceased, cannot certify that no domestic support obligations were owed or that, if there were, that they were paid. The court will not waive a requirement that the surviving Debtor, as the personal representative of the deceased Debtor, could complete in such capacity. Therefore, the request to waive the 11 U.S.C. § 1328 certification is denied.

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 Order Waiving Debtor's 11 U.S.C. § 1328 Certificate filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied and that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor William Johnson is denied.

47. 15-24979-E-13 LINDA VANPELT MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 6-28-15 [13]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 28, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is denied.

Linda VanPelt ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) to apply in this case. This is the Debtor's third bankruptcy petition pending in the past year. The Debtor's First Bankruptcy Case (No. 14-27048) was dismissed on December 3, 2014, after Debtor failed to meet a conditional order requiring Debtor to obtain a confirmation o an amended plan within 75 days of Debtor's First Plan's denial. *See* Order, Bankr. E.D. Cal. No. 14-27048, Dckt. 35, December 3, 2014. Debtor subsequently filed another case in *Pro Se* in order to stop the foreclosure of her home, which she voluntarily dismissed on June 26, 2015 for failure to make payments and confirm an amended plan. *See* Order, Bankr. E.D. Cal. No. 15-20897, Dckt. 33, June 26, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), no automatic stay went into effect when the current bankruptcy stay was filed.

If, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith, but may be rebutted by clear and convincing evidence to the contrary. *Id.* at § 362(c)(4)(D)(i)(I). Furthermore, 11 U.S.C. § 362(c)(4)(D)(ii) "provides that the later care is presumed to be filed in bad faith as to any creditor who sought relief from the automatic stay in a previous case of the debtor and the stay relief motion was, at the time of dismissal of such previous case, pending before the court or resolved with an order terminating, conditioning or limiting of the stay." 3 COLLIER ON BANKRUPTCY ¶ 362.06[4] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.).

Although the Debtor timely filed this Motion under 11 U.S.C. § 362(c)(4)(B), Debtor fails to explain how the extension of stay is in good faith as to the creditors. Debtor states that she has been more committed to work after the passing of her mother, whom she cared for three years; that her first case was dismissed due to poor counsel; that, but for the problems with that case, she would not have filed her second case in *Pro Se;* and that she now has competent counsel to ensure a successful plan. Dckt. 15. While these asserted facts tend to show that Debtor is filing in good faith, they do not support the imposition of stay as to creditors.

Furthermore, in the Debtor's previous case, Case No. 11-30525, HSBC Bank USA, National Association, the holder of the first deed of trust on the property the Debtor is trying to save, received relief from the automatic stay. Case No, 11-30525, Dckt. 127. Under the presumption of 11 U.S.C. § 362(c)(4)(D)(ii), the instant case is presumed to be in bad faith and the Debtor has not, in the Motion nor declaration, sufficiently rebutted that presumption.

In reviewing the allegations in the Motion, the Debtor states that her attorney in her first case failed to timely file the amended plan, which caused the dismissal of that case. Motion, p. 2:20-26; Dckt. 13. The Motion further states that extend the stay is necessary to "protect debtor's family home from possible foreclosure." *Id.*, p. 3:8-10.

The Motion further alleges that Debtor has stable income, having worked in the real estate industry for thirty years, and has been with her current employer for three years. *Id.*, p. 3:16-18.

This is the sum total of "grounds stated with particularity" in the Motion upon which the requested relief is based.

In her Declaration, Debtor provides additional testimony, some of which may well should be "grounds" stated in the Motion, not left in a declaration for the court to reclassify as "grounds." Dckt. 15. The Declaration obliquely indicates that Debtor's prior counsel did not communicate with her when the first bankruptcy case was dismissed. If the "blame" is to be placed on the prior attorney, as opposed to a debtor's inability to prosecute a case, then it must be clearly alleged and supported by evidence (such as dates and times of attempted communications and efforts to prosecute the prior cases).

The Declaration also states that the Debtor elected to dismiss the second bankruptcy case when she learned that the automatic stay had terminated by operation of law (11 U.S.C. § 362(c)(3)), and then sought-out the assistance of other counsel.

In reviewing the court's files, the court notes that Debtor has filed three prior bankruptcy cases, not just the two referenced in the Motion and Declaration. These prior cases and their status are as follows:

15-20897 Chapter 13 Case In Pro Se	Filed: February 5, 2015 Dismissed: June 26, 2015	
	I. The case was dismissed pursuant to the Motion of the Chapter 13 Trustee. 15-20879; Order, Dckt. 36. II. The grounds for dismissal included the Debtor being $5,292 delinquent in plan payments. *Id.*; Civil Minutes, Dckt. 34. III. The Debtor's request to dismiss did not state any grounds. *Id.* IV. Debtor failed to prosecute the case following the April 21, 2015 denial of confirmation of her plan. *Id.* V. Schedule I filed in case 15-20897 states under penalty of perjury that Debtor has monthly gross income of $8,104. *Id.*; Dckt. 9 at 16. VI. Excluding the mortgage expense (which it appears Debtor has not been paying), Debtor states under penalty of perjury that she has at least $5,061 in Monthly Net Income. *Id.*; Schedule J, Dckt. 9 at 18-19. VII. Debtor's household consists of one person. *Id.* VIII. Debtor's residence has a value of $550,000 and is subject to a first deed of trust securing an obligation of ($822,765). Debtor has a negative equity, from just the first deed of trust of ($272,765).	

14-27048 Chapter 13 Case Represented by Other Counsel	Filed: July 7, 2014 Dismissed: December 3, 3014	
	I. On Schedule I Debtor states under penalty of perjury that her gross income is $8,104 a month. 14-27048; Dckt. 1 at 20. II. On Schedule J Debtor states that her Monthly Net Income (not including any mortgage payment, real property taxes, or real property insurance) is at least $5,740. *Id.* at 20-22. III. Debtor's household is one person. *Id.*	
11-30525 Chapter 7 Filed by Counsel Different from Current Chapter 13 Counsel and Prior Chapter 13 Counsel	Filed: April 28, 2011 Dismissed: No Discharged: Not Entered Closed: No	
	I. Chapter 7 Trustee has filed a motion for Debtor to be denied a discharge. 15-2128. It is asserted that Debtor has failed to turn over $1,932.11 in non-exempt assets as required by a agreement with the estate. II. Case originally filed as Chapter 13 case. III. On Schedule I Debtor lists having gross income of only $4,000 a month. It consists of $2,000 in income from Debtor's business and $2,000 of Social Security Benefits which Debtor's mother (who lived with Debtor) received. 11-30525; Dckt. 1. IV. Debtor confirmed a Chapter 13 Plan in that case, which plan required a $100 a month payment for thirty-six months. *Id.*; Plan, Dckt. 5, and Order Confirming, Dckt. 30. V. Debtor voluntarily converted to a case under Chapter 7 on February 13, 2013.	

Taken at face value, Debtor has had monthly net income, after paying all of her expenses, of at least $5,000 a month since at least July 7, 2014. This would have the Debtor holding $60,000 of net monthly income since she has not been making a mortgage payment.

For expenses in these bankruptcy cases, Debtor states under penalty of perjury that she pays no income taxes. No provision is made for income or self employment taxes in any of the Schedules J filed in the bankruptcy cases. This puts into question the credibility of Debtor not only with respect to Schedules I and J, but as to her other statements in this case.

While "blaming" prior counsel, it appears that Debtor's real problem is that she does not have income to retain real property which has hundreds of thousands of dollars of negative equity after just the first deed of trust. FN.1.

FN.1. In prior Chapter 13 case No. 15-20897, Wells Fargo Bank, N.A. filed its Proof of Claim asserting a secured claim in the amount of $827,573, which would create a negative equity of more than ($300,000) after just the first deed of trust. Additionally, that Proof of Claim states that the pre-petition arrearage as of June 2015 was $136,911.84. Proof of Claim No. 1.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case, the prior case for the court, and her conduct over the past four years in which she has benefitted from multiple bankruptcy cases. Debtor has not rebutted the presumption, failing to provide the court with some credible, good faith, ability to prosecute this bankruptcy case. Though she has not been making a mortgage payment, property tax payment, or insurance payment, Debtor's Schedule B lists Debtor having only $500 in any bank accounts and no cash. Debtor's statements under penalty of perjury as to her income indicate that she should have at least $60,000 of monies on hand.

The motion is denied and the automatic stay is not extended.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion denied.

48. 15-21082-E-13 STEVEN/MARIA PETERSON MOTION TO CONFIRM PLAN
PLC-3 Peter L. Cianchetta 6-9-15 [38]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. David Cusick, Chapter 13 Trustee, has filed a statement of nonopposition. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

49. 11-22884-E-13 WENDEL/MARY APPERT MOTION TO MODIFY PLAN
WSS-4 W. Steven Shumway 6-11-15 [83]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 11, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

Wendel N. Appert and Mary D. Appert ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 11, 2015. Dckt. 83.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 7, 2015. Dckt. 94. The Trustee objects to the instant Motion on the following grounds:

1. The Trustee notes that the Order confirming Debtor's first plan, filed June 10, 2011, accounted for two separate increases in plan payments: an increase beginning August of 2014 to the amount of $630.00, and another beginning January of 2015 to the amount of $698.00. Dckt. 32. The increased plan payments were to account for a total of $23,582.00 to be paid into the plan. The debtor has failed to pay the increases in plan payments. The Trustee alleges that the proposed Modified Plan reduces the total to be paid over

the life of the plan by $3,517.76. Debtors' proposed Modified Plan fails to cure the existing delinquency, and provides no alternative to cure the delinquency. Furthermore, Debtors' have failed to provide an explanation for reducing the total payment of the plan.

2. The Trustee asserts that the Debtors' previously filed a Motion to Ratify Debt Incurred for a third 401k loan that was obtained without court permission, to which the Trustee objected on the basis of a Debtor's failure to provide an explanation as to why it was necessary to incur post-petition debt, and the court denied the motion without prejudice.

3. That the proposed Modified Plan, filed June 11, 2015, is not properly signed. The Trustee notes that Local Bankruptcy Rule 9004-1(c)requires that the name of the signor is to be typed underneath the signature.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on July 15, 2015. Dckt. 97. The Debtor states that, as to Debtor Wendel Appert's income, that while his income went up to $10,834.58 per month, he had to increase his tax withholding taxes and social security from $970.00 to $2,094.74 per month to avoid a tax bill. The Debtor states that his monthly take home pay has decreased by $156.86.

The Debtor then states that his payment on the 401k loan has decreased to $812.48 and that he has suspended any voluntary contributions to his 401k plan.

The Debtor states that they have provided an updated income and expense report and that, while the budget is tight, that they can afford the plan payments. The Debtor states that because they were able to replace the roof, they have been able to reduce home maintenance expenses by $100.00 per month, as well as reduced the food expenses by $100.00 per month. The Debtor has also reduced other expenses, such as transportation, and has eliminated entertainment expenses.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee's objections are well-taken. The Trustee's first two objections are based on the proposed plan failing to cure the existing delinquency. The Debtors' recognize that they forgot their Chapter 13 Plan included a provision for an increase in payments, failed to make such payments, and thus became delinquent. Dckt. 85, para. 2. Debtors' state that they increased their payments effective with the February 2015 payment, due to their temporary suspension of voluntary contributions to Wendel Appert's 401k plan. Dckt. 85, para. 4. Debtor's modified plan does not provide for a means to cure the existing delinquency. The Debtor's supplemental declaration does not provide any explanation or statement that the delinquency has been cured. Absent an explanation from the Debtor's as to how they propose to cure the delinquency, and further explain the need to reduce plan payments, there is cause to believe that this plan is not Debtor's best efforts nor made in good faith and thus reason exists to deny confirmation. 11 U.S.C. § 1325(b).

As to the third objection, a review of the Motion shows that it does not appear to comply with Local Bankruptcy Rule 9004-1(c), which requires that the name of the signor be typed underneath the signature. The failure to comply with Local Bankruptcy Rule 9004-1(c) is grounds to deny confirmation.

While the Debtor's supplemental declaration concentrates on the proposed budget and the ability to make plan payments, the Debtor does not address any of the Trustee's objections.

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

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

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

50. 11-35484-E-13 WILLIAM/DIANE CATLETT MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 6-1-15 [54]

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 1, 2015. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

The court's decision is to xxxxxxxxxx the Motion to Confirm the Modified Plan.

William and Diane Catlett ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 1, 2015. Dckt. 54.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 7, 2015. Dckt. 66. The Trustee objects on the following grounds:

1. The case is overextended and completes in 65 months. The Trustee states that the Debtors failed to make the May 2015 payment, hindering the Trustee's ability to make the ongoing mortgage payment to the Creditor in the amount of $1,862.34. The Debtor's proposed plan does not account for this post-petition arrearage.

2. The Trustee raises concern with primary Debtor's income and requests pay stubs to verify monthly income. The supporting

amended Schedule I reflects gross monthly income of $6,013.80 with deductions that total $1,505.23, resulting in a net income of $4,508.57. It appears the Schedule I is identical.

3. The amended Schedule J lists #8 Childcare and children's education costs $100.00 and #10 personal care products and services $75.00. Also listed as other expenses is cosmetic/haircuts $15.00 and sitter/child care $125.00. The Trustee is uncertain if these expenses have been double counted.

DEBTOR'S REPLY

The Debtor filed a reply on July 14, 2015. Dckt. 69. The Debtor first states that all mortgage arrears have been paid absent of one post-petition mortgage payment in the amount of $1,862.34. The Debtor proposes to pay $2,025 x (3) = $6,075.00, less $401.00 for Trustee's fees, and $5,586.00 in Class 1 payments to allow for $88.00, and a lump-sum payment of $1,775.00, to complete the plan in a timely manner, which the Debtor requests is put into the order confirming.

Additionally the Debtor states that they have provided the Trustee with updated pay stubs.

Lastly, the Debtor states that there are no duplicate expenses as there was a carryover from the old form where child care and educations casts were in separate categories. The Debtor states that the newer form combines the two expenses compared to the older forms which separated them so there is, in fact, no duplication. FN.1.

FN.1. The court notes that Debtor's counsel effective use of formatting techniques the reply, utilizing headings and addressing each of the Trustee's objections individually. This provides for efficiency and clarity in reviewing pleadings.

DISCUSSION

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

As to the Trustee's second and third objection, the Debtor's reply and subsequent mailing of updated pay stubs to the Trustee resolve the objections. The new district form has combined the two expenses category into one and does not appear to be duplicate expenses.

The proposed amendments to the plan are to provide increased payments and lump sum payment to cure an arrearage. This presents the court with the question of whether, based on the evidence presented and notice give, the court can conclude that such cure methods are feasible.

At the hearing, the Trustee stated ----------

Therefore, because the proposed plan [does/not] provide the curing of the arrearage which causes the plan to extend beyond 60 months and the proposed changes being material requiring notice to creditors, the modified Plan [does/not] comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and [is/not] confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is xxxxxxxxxxxxxxxxxx.

51. 14-23385-E-13 MICHELE WILLIAMS CONTINUED MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 3-30-15 [78]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Michele Williams ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 20, 2015. Dckt. 78.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 20, 2015. Dckt. 84. The Trustee objects on the following grounds:

1. The Debtor proposes in Section 6.03 as adequate protection payment of $1,698.01 per month to Wells Fargo Bank which is to be applied first

to the post-petition interest accruing on the claim and then principal, or as specified in the loan modification

a. The Debtor's supplemental Schedule J nor Section 6.03 of the proposed plan make any provisions for property taxes or insurance. If the Debtor intends the adequate protection payment to include escrow, $1,164.07 is available for interest and principal payment.

b. The Creditor filed Proof of Claim No. 7-1 listing a secured claim for $403,795.48 at a 2.675% variable interest rate. While the Plan proposes a payment of $1,698.01 as an adequate protection payment, the Debtor provides no evidence as to why this is proper. The Trustee argues that the burden of proof is on the Debtor and believes that the mortgage payment should be approximately 31% of gross income which would be $2,132.90 based on the Debtor's gross income.

2. The Debtor does not provide any explanation of changes in income or expense. The Debtor reports monthly income of $5,883.89 (Dckt. 81) as compared to the previously reported $5,477.44 (Dckt. 66). The Debtor's monthly expenses have increased from $2,945.61 at the time of filing to $3,474.01. The Debtor's declaration discloses that the Debtor has an unemployed son who lives with her and a daughter who is in college. In addition, the Declaration reports the son's daughter resides with them half the time and that her mother lives with her the other half. The proposed plan includes in Class 2 a 2006 Land Rover Range Rover with a monthly dividend of $250.00, which the Debtor state is for the use of her mother. The Trustee raised a similar issue on a prior Motion to Confirm.

DEBTOR'S REPLY

The Debtor filed a reply on April 28, 2015. Dckt. 87. The Debtor requests a continuance to allow the Debtor the opportunity to file supplemental papers and pay stubs to support the plan.

MAY 5, 2015 HEARING

At the hearing, the court continued the hearing on the Motion to Confirm the Modified Plan to 3:00 July 21, 2015. Dckt. 89. The Trustee and Debtor agreed to continue this motion to keep this proposed plan in place pending Debtor obtaining a loan modification or filing a new plan.

DISCUSSION

Since continuing the hearing, no supplemental papers have been filed in connection with instant Motion nor any other motion.

The court notes that this is not the Debtor's first (or second or third) pending bankruptcy case since 2009. Debtor filed, in pro se, a Chapter 13 case on September 23, 2009, which was dismissed on November 10, 2009. 09-40428. Debtor then filed, in pro se, a Chapter 7 case on February 12, 2010. 10-2333. In that case she received her discharge on July 30, 2010.

Debtor commenced a Chapter 13 case, in pro se, on September 9, 2011. 11-41829. On November 28, 2011, Debtor's counsel in this case substituted in and represented Debtor in the 2011 case. Debtor confirmed a plan in the 2011 case. 11-41829; Order filed January 31, 2012, Dckt. 61. By February 2012, one moth later, Debtor filed a motion to modify the confirmed plan. *Id.*; Dckt. 72. Confirmation of the modified plan was denied.

A second modified plan was confirmed by the court on June 25, 2012. *Id.*; Order, Dckt. 100. By September 2012, the Chapter 13 Trustee filed a notice of default in plan payments by Debtor. *Id.*; Dckt. 102. This begat the Debtor filing a third modified plan and motion to confirm on October 12, 2012. *Id.*; Dckts. 108, 104. The court confirmed the Debtor's third modified plan on December 20, 2012. *Id.*; Order, Dckt. 113.

In August 2013, the Chapter 13 Trustee filed a notice of default in plan payments for June and July 2013. *Id.*; Dckt. 114. The Debtor responded, filing a fourth modified plan and motion to confirm. *Id.*; Dckts. 116, 117. The court confirmed the Fourth Modified Plan by order filed on November 1, 2013. *Id.*; Dckt. 129. By January 2014, the Chapter 13 Trustee had filed another notice of default, identifying defaults for three months. *Id.*; Dckt. 130. The case was then dismissed by order filed on March 24, 2014.

Debtor commenced the current case on April 1, 2014 (just seven days after dismissal of the prior Chapter 13 case in which there were multiple plan payment defaults and modified plans). The court confirmed the Debtor's Chapter 13 Plan in this case by order filed on June 18, 2014. Dckt. 56. In December 2014 the Chapter 13 filed a Notice of Default in this case in plan payments. Dckt. 61. The confirmed Plan required Debtor to make payments of $2,895.00 a month for forty-two months, and then the payments stepping up to $2,985.00 and then to $3,065.00 a month. The Debtor had defaulted in the November and December 2014 payments. (The court notes from the Trustee's report of payment in the Notice, that the Debtor consistently ran one month in arrears with her plan payments.)

In seeking the various modifications, the Debtor has some routine and some extraordinary emergencies which have arisen. Each of these has derailed the Debtor in performing what she had promised. While the court is sympathetic to consumers dealing with everyday real life struggles, the Debtor and her counsel have demonstrated that the Debtor is not a credible witness with respect to her finances. It appears that Debtor and her counsel create whatever plan is the Debtor's dream, not one based on financial reality.

Debtor's response has been to file an amended plan in this case. Since commencing her Chapter 13 case in 2011, the Debtor has confirmed five plans spanning three years – with the Debtor defaulting on all of them. The current proposed plan promises that the Debtor will make monthly payments going forward of $2,430.00.00 a month for eleven months, and then stepping up the payments to $2,525.00 and then to $2,610.00.

The Trustee's objection concerning the adequate protection payment is well-taken. A review of the proposed plan and the supplemental pleadings show that the Debtor has not explained or provided information as to how the proposed adequate protection payments are sufficient. The Debtor, in her reply, merely requests a continuance to supplement the record. The objection by the Trustee, however, should not have come as a surprise given the fact that the

Trustee raised the same exact objection on the Debtor's last attempt to confirm a modified plan. The only difference is that the Debtor has increased the proposed adequate protection payment from $1,360.00 to $1,698.01. The Debtor still has not provide any evidence that this amount, however, actually does protect the creditor. The court cannot determine, based on the information provided, if the proposed payments is sufficient.

On Schedule A Debtor lists the her residence having a value of $316,000.00 and Wells Fargo Bank, N.A. having a secured claim well in excess of that amount. Assuming that the loan was modified to the present value of the property, with that amount amortized over 30 years at 3% interest, the monthly principal and interest payment would be $1,332.27. While the Debtor and Trustee discuss the principal and interest payments on the variable interest rate loan that Debtor admits she has to modify, the simple fact is that reducing the debt to the value of the property yields a payment (for a person with a good credit score) unreachable for Debtor.

Wile the supplemental declaration filed by the Debtor (Dckt. 73) for the prior Motion to Confirm explained the change in circumstances that led to an increase in expenses, including the health of her child and the damage to her home following the earthquake in August 2014, it does not address the feasibility of the Debtor to proceed in the good faith performance of the Chapter 13 Plan nor was it provided for in connection with the instant Motion. Going back to the "explanations" for the extraordinary events which cause defaults under prior plans, this Debtor has testified:

A. Declaration in Support of Fourth Modified Plan, 11-41-829, Dckt. 119.

> "I have had several changes/problems that have arose which now require me to further modify my Chapter 13 Plan. These factors include; I missed payments because of three family incidents that recently occurred - my son was caught in a crossfire and was shot, my mom just went through a medical procedure and my daughter went back to the east coast for college - I have proof of all incidents and I am the "rock" of my family - the only one EVERYBODY depends on and needs. If I can place the missed payments on the end that would be great as I don't want to jeopardize having this case dismissed."

B. Declaration in Support of Third Modified Plan, 11-41-829, Dckt. 106.

> "I have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I have incurred unexpected expenses on the rental property that was originally included in the plan however, I ended up surrendering the property. I incurred unexpected expenses related to getting my daughter off to college on the East Coast."
>
> "I filed for protection under the bankruptcy code because I originally had a rental property and was having trouble with

the tenants paying. There was also a death in my immediate family and loss of income from a family member."

C. Declaration in Support of Second Modified Plan, 11-41-829, Dckt. 91.

" have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I am Surrendering the real property currently in class one located at 8805 Scarlino Court, Vallejo CA."

Using the information from Schedules I and J filed by Debtor in April 2014, the court considers the feasibility of the Debtor performing this modified plan (which following in the footsteps of five prior plans which have failed). While the Debtor reports have good income from a stable employer, the expenses listed on Schedule J are not reasonable as documented by the Debtor's bankruptcy history. Debtor has a child with significant medical issues. Debtor only budgets only $75.00 a month. Debtor has a son who is unemployed, living at home, and dependant on the Debtor not only for his needs, but his minor daughter. Debtor has not budgeted for that.

Debtor's plan requires her to make payments for two vehicles. One is a 2006 Land Rover, to repay a $12,000 debt. This vehicle is now 9 years old, and it is likely that the next extraordinary event explaining a default is that there has been a major vehicle expense. The Debtor is also choosing to pay for a 2009 Dodge Charger. While repeatedly defaulting in her Chapter 13 Plan, it is "necessary" for this Debtor to be paying for two cars.

The Debtor has not shown that yet another modification of a Chapter 13 Plan will result in a feasible plan that can be performed. While the Debtor may desire to have a plan, she has shown that she cannot perform the plan. It is concerning to the court that both Debtor and Debtor's counsel have not addressed these concerns as they have been on notice of such inadequacies in the proposed plans for awhile. The Debtor seeks a continuance to provide information that the Debtor should have provided the first time she sought to modify the plan. The court will not grant a continuance.

The Debtor has had her opportunity to propose a new, feasible modified plan or to seek a loan modification. Neither has been done.

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

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

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

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

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

52. 14-32085-E-13 MRL-3 | **PATRICIA MELMS** / **Mikalah R. Liviakis** | **MOTION TO CONFIRM PLAN** / **6-8-15 [59]**

Final Ruling: No appearance at the July 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. David Cusick,Chapter 13 Trustee, has filed a statement of nonopposition. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

53. 11-22287-E-13 LAWRENCE MORGAN CONTINUED MOTION FOR CONTEMPT
PLC-8 Peter L. Cianchetta 4-6-15 [143]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

Pursuant to the court order issued on July 8, 2015 (Dckt. 155) and pursuant to the stipulation of the parties, the hearing has been continued 3:00 p.m. on August 18, 2015.

54. 12-30588-E-13 DIANE/OSVALDO MALDONADO MOTION TO MODIFY PLAN
ET-7 Matthew R. Eason 5-28-15 [148]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

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

Diane and Osvaldo Maldonado ("Debtors") filed the instant Motion to Modify Plan May 28, 2015. Dckt. 148. Debtors state that a change in financial circumstances require the filing of a Modified Plan. Specifically, the Debtors assert that they have increases in auto insurance, cellular phone, telephone, water/sewer, homeowner's insurance, and health insurance costs.

Trustee's Objection

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

1. The Motion to Confirm Modified Plan may not comply with the requirements of Bankruptcy Rule 9013 because it does not plead with particularity the grounds upon which relief is sought.

2. The Modified Plan has not been filed separately with the court, and appears only as an exhibit attached to this motion.

3. Debtor’s proposed Modified Plan does not provide a monthly dividend for administrative expenses. Under the confirmed Plan, there is $1,515.78 remaining to be paid with a monthly dividend of $58.33.

4. The Debtor’s proposed Modified Plan has not been properly signed by the Debtor, and therefore does not comply with Local Bankruptcy Rule 9004-1(c).

5. Debtor has not filed current Amended Schedules I and J to reflect a monthly payment under the proposed Modified Plan that is less than the monthly net income shown on the current Schedule J.

The Trustee’s objections are well-taken. A review of the Motion shows that it does not appear to comply with Fed. R. Bankr. P. 9013 which requires that the motion state with particularity the grounds in which relief is sought – here, grounds for modifying the Debtor’s Plan. The Motion states that there has been a change to “financial circumstances of the Debtor’s and/or the legal circumstances of the Plan . . .” but fails to offer any specificity. Rather, the Motion refers the court to the Debtor’s Declaration for further explanation. Merely pointing the court to other filed documents does not meet the requirements of Fed. R. Bankr. P. 9013. The failure to comply with Fed. R. Bankr. P. 9013 is grounds to deny confirmation.

A review of the Docket shows that Debtor has not filed the proposed Modified Plan with the court, but has opted to file the Plan as an Exhibit. Under Local Bankruptcy Rule 5005-1, the Modified Plan must be submitted to the docket separately from the Motion to Confirm.

Under the confirmed Plan, a monthly dividend of $58.33 was being paid, with a remaining balance of $1,515.78. The proposed Modified Plan does not provide for any administrative expenses nor does it provide for the authorization of the prior administrative expenses paid. Therefore, it appears that Debtors’ plan does not comply with 11 U.S.C. § 1322(a)(2).

Debtor's plan is not properly signed, as the name of the person signing the document shall be typed underneath the signature, pursuant to Local Bankruptcy Rule 9004-1(c).

Finally, Debtor has not provided updated Schedules I and J to support a change in financial circumstances. As discussed supra, the Motion states that the modification is necessary for a change in financial circumstances with no further explanation. This lack of candor is only further exasperated by the fact that the Debtor has not provided supplemental schedules to show the alleged change in financial circumstances. Without the supplemental schedules, the generic increases in costs as alleged by the Debtor is merely conjuncture without their being any evidence or schedules to support such assertions. This raises questions about the accuracy of the Debtor’s plan and financial information, as well as whether the proposed Modified Plan is feasible. 11 U.S.C. § 1325(a)(6)

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

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

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

55. 14-30389-E-13 MELISSA JONES MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 6-3-15 [63]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Melissa H. Jones ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 3, 2015. Dckt. 63.

TRUSTEE'S OBJECTION

David P. Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 7, 2015 Dckt. 81. The Trustee objects on the following grounds:

1. Debtor is $125.00 delinquent in plan payments, which represents a monthly plan payment of $125.00. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than 25th day of each month.

2. The Trustee asserts that the Debtor has failed to resolve the Trustee's prior objections to plan confirmation, which were sustained on February 3, 2015. *See* Dckt. 14. The Trustee states that

the proposed plan is not Debtor's best effort. The Debtor is under the median income and proposes plan payments of $7,875.00 current through April 2015, then $125.00 for 34 months with a 15.98%, which totals $8,168.42 or no less than $8,160.00, to unsecured creditors.

The Debtor provided the Trustee with her 2013 income tax return which reflected a refund in the amount of $6,124.00. The Debtor's plan fails to propose to pay the to pay this, or future income tax refunds, into the Plan for the benefit of her creditors.

The Debtor lists an expense of $332.98 per month on Schedule J for auto insurance. The Trustee asserts that this expense does not appear reasonably necessary for the maintenance and support of the Debtor or the Debtor's dependents. Trustee notes that the Debtor admitted at the First Meeting of Creditors that she has her boyfriend on her auto insurance, so that he can drive her car.

3. The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor lists an income of $350.00 on Schedule I, obtained from the financial support of friends and family. The Trustee states that the Debtor has failed to provide an explanation in her declaration as to the willingness and ability of her friends and family to contribute this monthly income.

DEBTOR'S REPLY

The Debtor filed a reply on July 14, 2015. Dckt. 84. The Debtor states that the Debtor is current according to the "TSP." Additionally, the Debtor states that the Debtor's insurance policy that includes several cars, two of which are driven by friends and family. The Debtor states that these individuals contribute to the income of the family to pay their proportionate share of the bills.

TRUSTEE'S STATUS REPORT

The Trustee filed a status report on July 15, 2015. Dckt. 87. The Trustee states that the Debtor is now current in plan payments.

However the Trustee states that the Debtor still has not addressed the issues concerning the tax returns and the failure to provide declarations from the Debtor's boyfriend and Debtor's daughter affirming their willingness and ability to contribute the income to help fund the Chapter 13 Plan.

DISCUSSION

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

The Trustee's objections are well-taken. As to the Trustee's first objection, the Debtor is now current and the objection is overturned.

The Trustee's second and third objections are based on the proposed plan's failure to remedy the Trustee's prior objections to plan confirmation.

The Debtor's Plan proposes to pay a 15.98% dividend to unsecured creditors, which totals no less $8,168.42 or no less than $8,160.00. However, Debtor's 2013 income tax return reflects a refund which she did not disclose in her schedules nor provide for in the plan. Thus, the court may not approve the plan as it appears that there is additional income that should be, and could be in future years, be committed to the plan. Additionally, the Debtor's monthly expense on auto insurance does not appear to be reasonably necessary for the maintenance and support of the Debtor or her dependents. Whether the Debtor is fully providing for all of her disposable income in the form of current and future tax returns raises concerns over whether there are additional funds that should be applied to plan payments.

As to the third objection, it appears that the Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). The Debtor fails to provide an explanation as to the willingness and ability of her friends and family to contribute to her monthly income. The Debtor, in her declaration, attempts to justify the auto insurance policy by stating that those covered by the policy contribute to the household expenses. However, there are no declarations provided by either the boyfriend or daughter to state that they are contributing and will be contributing. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, there is cause to deny confirmation.

The amended Plan complies does not comply with 11 U.S.C. §§ 1322, 1323 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.

56. 15-24997-E-13 DAVID/AMY POST MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 6-25-15 [8]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, the Internal Revenue Service , Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

David and Amy Post ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 11-44597) was dismissed on November 21, 2014, after Debtor. *See* Order, Bankr. E.D. Cal. No. 11-44597, Dckt. 73, November 21, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The

subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as one of the Debtors received a shortfall in income with the slow down of his employer's business. Debtor argues that his employer's issues have since been resolved and that, because he has significant seniority over other employees, he is confident his work situation will remain stable. Debtor further asserts that, having already paid into a Plan for three years, the new payments will be much more manageable.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.