UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 26, 2014 at 3:00 p.m.

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1. 10-53003-E-13 SCOTT/ANA PANNETTA — ORDER TO SHOW CAUSE RE: IMPOSITION OF CORRECTIVE SANCTIONS
RHS-1 Kristy Hernandez — 7-11-14 [95]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parities on July 11, 2013. 46 days notice of the hearing was provided.

The court's decision is to xxxx the Order to Show Cause.

On July 9, 2014, the court conducted a continued hearing on the Motion of the Chapter 13 Trustee to Dismiss the Chapter 13 case filed by Scott Pannetta and Anna Pannetta ("Debtors"). Debtors commenced this case on December 17, 2010, and are approximately 42 months into confirmed plan with a 60 month term. On February 27, 2014, the Chapter 13 Trustee filed his motion to dismiss the bankruptcy case (Dckt. 53), alleging that the Debtors were in monetary default in $1,011.00 in plan payments. This is for multiple months of the $345.00 required payment under the Chapter 13 Plan from the Debtors.

Though the Motion to Dismiss was filed pursuant to Local Bankruptcy Rule 9014-1(f)(1) with at least 28-days notice given and for which a written opposition and evidence was required at least 14 days prior to the hearing, no opposition was filed by counsel for the Debtors. At the April 16, 2014 hearing on the Trustee's Motion, Ronald Holland appeared as counsel for the Debtors. Mr. Holland requested that the court not dismiss the case, notwithstanding no opposition having been filed, because the Debtors had filed a modified plan and motion to confirm the modified plan.

Though the Trustee's Motion to Dismiss was filed on February 27, 2014, and that Motion identifies the default occurring in January 2014, **the proposed modified plan and motion to confirm were not filed until April 14, 2014 (the eve of the April 16, 2014 10:00 a.m. hearing on the Motion to Dismiss).**

Notwithstanding the Debtors' and their attorney's failure to file an opposition, the court continued the hearing on the Motion to Dismiss to June 3, 2014. The court also instructed Mr. Holland to file supplemental declarations and pleadings, and provide the correct hearing date for the motion to confirm the modified plan. Civil Minutes, Dckt. 60. A supplemental declaration was required because the Declaration of Debtors filed (Dckt. 61) failed to provide the court with competent, personal knowledge testimony (Fed. R. Evid. 601, 602) from which the court could make the necessary findings of fact and conclusions of law to confirm a modified plan pursuant to 11 U.S.C.

§§ 1329, 1325(a), and 1322.

The Motion to Confirm the Modified Plan (Dckt. 58) is filed by the Hernandez Law Group, and lists Kristy A. Hernandez, Brunella M. Palomino, and Ronald Holland as the attorneys for the Debtors. **However, at that point in time, the Hernandez Law Group and those attorneys were not the attorneys of record for the Debtors. Rather, the attorney of record was Lucas B. Garcia of the Litchney Law firm.** *See* Petition, Dckt. 1; Motion to Confirm Plan filed February 16, 2011, Dckt. 24; Motion to Value Collateral filed February 16, 2011, Dckt. 28. As of the April 14, 2014 filings, no substitution of attorney had been filed.

At the June 3, 2014, hearing on the Motion to Confirm the Chapter 13 Plan, no attorneys appeared for the Debtors. Civil Minutes, Dckt. 77. As set forth in the Civil Minutes, the motion was denied for substantive deficiencies. **No attorneys appearing for the Debtors, the court continued the hearing on the Motion to Dismiss to July 9, 2014**, and ordered the following attorneys to appear at the continued hearing: Lucas Garcia, Sarah Litchney, Roland Holland, and Kristy Hernandez. The court's order requiring the appearance of counsel was filed and served on June 5, 2014. Dckt. 82.

On June 10, 2014, a Notice of Substitution of Attorney was filed, signed by the Debtors, Ron W. Holland (for the Litchney Law Firm), Sara Litchney (for the Litchney Law Firm) and Kristy Hernandez (for the Hernandez Law Group). Dckt. 83. The Substitution of Attorney provides for Kristy A Hernandez, of the Hernandez Law Group, Inc., to substitute in as counsel for the Debtors, and for Ronald W. Holland and Sara Litchney, of the Litchney Law Firm, to substitute out as counsel for the Debtors.

Other than the filing of the Substitution of Attorney on June 10, 2014, no other action was taken by the Debtors or their new counsel until July 8, 2014, the day before the continued July 9, 2014 hearing on the Chapter 13 Trustee's Motion to Dismiss. On July 8, 2014, a Motion to Confirm Second Modified Chapter 13 Plan was filed by Kristy Hernandez and Brunella Palomino, of the Hernandez Law Group. Dckt. 88. A Second Modified Plan was also filed for the Debtors. Dckt. 85. The Second Modified Plan provides for curing the defaults by waiving the defaults, and then reducing the plan payments for the remainder of the 60-month term.

No opposition was filed by the Debtors to the Motion to Dismiss, notwithstanding it having been continued twice.

At the continued July 9, 2014 hearing, Kristy Hernandez, Sara Litchney, and Ronald Holland appeared. Lucas Garcia did not appear. (Mr. Garcia appeared in open court on July 10, 2014, apologizing to the court and stating that there had been a calendaring error which resulted in his failure to appear on June 9, 2014.)

At the hearing, Sara Litchney explained that at some earlier date, though no substitution was filed, the Debtors were "transferred" to a different law firm (presumably the Hernandez Law Group, Inc.). She further represented to the court that under the California Rules of Professional Conduct clients could be transferred from one law firm to another, so long as the clients were given notice they were being transferred.

In reviewing the California Professional Rules of Conduct, the court notes the following:

Rule 3-700 Termination of Employment

(A) In General.

> (1) If **permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission**.
>
> (2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

...

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, **a member may not request permission to withdraw in matters pending before a tribunal**, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client

> (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
>
> (b) seeks to pursue an illegal course of conduct, or
>
> (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
>
> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
>
> (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
>
> (f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation

of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, **in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.**

The court also notes that California State Bar Rule of Professional Conduct 2-300, relating to the Sale or Purchase of a Law Practice of a Member, Living or Deceased, provides,

All or substantially all of the law practice of a member, living or deceased, including goodwill, may be sold to another member or law firm subject to all the following conditions:

(A) Fees charged to clients shall not be increased solely by reason of such sale.

(B) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e), then;

(1) if the seller is deceased, or has a conservator or other person acting in a representative capacity, and no member has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, then prior to the transfer;

(a) the purchaser shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the purchaser shall obtain the written consent of

the client provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such 90-day period.

(2) **in all other circumstances**, not less than 90 days prior to the transfer;

(a) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a **written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, the purchaser may act on behalf of the client until otherwise notified by the client**. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written consent of the client prior to the transfer provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.

(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken.

(D) All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable.

(E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.

(F) Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule.

At the July 9, 2014 hearing, Sarah Litchney made reference to a "Notice" that the clients had been transferred had been provided. The court does not know if the Litchney Law Firm and Sarah Litchney has sold or transferred "all or substantially all of the law practice" (presumably to the Hernandez Law Group, Inc.). The court notes that the most recently filed case in which Sarah Litchney is the attorney of record for a party is Case No. 12-33844, which was closed on November 9, 2012.

LOCAL RULE GOVERNING COUNSEL OF RECORD

This tribunal, the United States Bankruptcy Court, has adopted Local Bankruptcy Rules which include rules governing the conduct of attorneys representing parties before this court. Local Bankruptcy Rule 2017-1 provides, in pertinent part,

> Attorneys - Appearances, Scope of Representation, and Withdrawal
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> (a) Scope of Representation in Bankruptcy Cases and Proceedings.
>
> (1) An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements. However, an appearance in the bankruptcy case for a party does not require the attorney to appear for that party in an adversary proceeding.
>
> (2) **An attorney appearing in a bankruptcy case or in an adversary proceeding may not withdraw from representation, or decline to act on behalf of the client, without first complying with the withdrawal requirements of Subpart (e) of this Rule.** Any contract or agreement which purports to limit the scope of an attorney's representation, except as permitted by Subpart (a)(1) of this Rule, will not be recognized by the Court.
> ...
>
> (e) Withdrawal. Unless otherwise provided herein, **an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared.** The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. **The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder.** Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit.
> ...
>
> (h) Substitution of Attorneys. An attorney who has appeared in

> an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. **All substitutions of attorneys shall require the approval of the Court.**

FN.1.

FN.1. This Bankruptcy Local Rule is consistent with Local Rule 182 of the United States District Court for the Eastern District of California governing the appearance and withdrawal of attorneys from federal district court proceedings. For attorneys to withdraw or substitute in and out of cases before the District Court, court approval is required.

Notwithstanding whatever sale or transfer of business that the Litchney Law Firm and Sarah Litchney may have engaged in, no matter what representation Ronald W. Holland thought he was doing for what law firm, and no matter what undisclosed representation that Kristy Hernandez and the Hernandez Law Group, Inc. intended to provide these Debtors, they all failed. Nobody was there when the Debtors faced getting their case dismissed. Only on the precipice of dismissal was a quick motion and plan filed with the court, which was subsequently denied confirmation. No attorney, at any time, has filed an opposition to the Chapter 13 Trustee's Motion to Dismiss the Debtors' bankruptcy case. Even though a Substitution of Attorney was eventually filed (which was authorized by the court, Order at Dckt. 84), no action was taken to represent the Debtors until, once again, the day before the second continued hearing on the Motion to Dismiss, and a new motion and further proposed modified plan were filed. The hearing on that motion is now set for August 19, 2014, one hundred sixty-three days after the Trustee filed his Motion to Dismiss this case.

STATUS OF DISMISSAL

Though the court could, and possibly should, have dismissed the bankruptcy case at the third hearing on the Motion to Dismiss (there being no opposition filed for the Debtors), the court did not dismiss the case. The court has continued the hearing on the Motion to Dismiss to September 10, 2014, to see if any attorney can and will prosecute this case for the Debtors.

If the court had dismissed the case on July 9, 2014, the Debtors may well have had substantial claims against one or all of the attorneys for having invested four years into a five year Chapter 13 Plan and then having it all flushed down the drain. Though protecting attorneys from possible claims is not the directive of the court, the attorneys have been the beneficiary of the court considering the harm which could and would be inflicted on the Debtors by having their case dismissed due to the lack of prosecution by their attorney(s).

Dismissal of this case on July 9, 2014 (the third hearing on the Trustee's Motion to Dismiss) would subject the Debtors to even more harm and distress caused by these attorneys and would, in light of the court's powers to govern the conduct of parties and attorneys, be unnecessarily cruel at this time. It is not a highwater mark for the legal profession when the court,

rather than the clients' own attorney(s), appears to have the clients' interests at heart rather than merely the "trafficking in clients" as part of "doing business."

IMPOSITION OF CORRECTIVE SANCTIONS

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).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. 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.

After three hearings on the Motion to Dismiss, it is clear that for the attorneys involved in representing the Debtors in this case it has not been sufficiently "corrective" for the court to conduct hearings and bring to the attorneys' attention the deficiencies. Further, it is also clear that having the court identify the lack of representation and attorneys appearing and then disappearing from representation did not bring about a correction in the conduct of the attorneys.

For Sara Litchney and the Litchney Law Firm, all it brought was a general reference that her law firm merely had to give notice to the client that they were being transferred under the State Bar Rules and she and her law firm were done with these proceedings (that Law Firm commenced) in this federal court. That is clearly not what the State Bar Rule provides, or what is required under the Local Bankruptcy Rules and the Local Rules of the United States District Court. Obtaining court authorization for an attorney substituting out of a case or proceeding is required.

Lucas Garcia, the attorney for the Litchney Law Firm for the Debtors just disappears from the case, with no effort made by the Litchney Law Firm to substitute in another member of the firm as the counsel of record for the Debtors, the Litchney Law Firms' client. The clients are just left adrift.

After the Trustee filed his Motion to Dismiss, Ronald Holland, Brunella Palomino, and Kirsty Hernandez filed a motion in this case on April 14, 2014, purported as attorneys for "Debtor(s)." No substitution of attorneys is provided and they come in as "competing attorneys" for the Debtors attorney of record. No opposition to the Motion to Dismiss is filed by attorneys at the Litchney Law Firm or the interceding attorneys at the Hernandez Law Group.

Only after the interceding attorneys had the motion to confirm a modified plan denied is a substitution of attorney filed. But then, the Hernandez Law Group does nothing to prosecute the case until filing a motion and proposed Second Modified Plan the day before the third hearing on the Trustee's Motion to Dismiss.

In light of the conduct of the various attorneys who have floated in and out of this case purporting to be counsel for the Debtors, the court sees cause to order each attorney to pay the following monetary corrective sanctions,

A. Sarah Litchney.....$500.00
B. Lucas Garcia.....$250.00
C. Kristy Hernandez.....$500.00
D. Brunella Palomino.....$250.00
E. Ronald W. Holland.....$250.00

The court has set the corrective sanction at $500.00 for Sarah Litchney and Kristy Hernandez at $500.00 in light of their senior partner status at their respective law firms (being the name partner), that they have responsibility for, and to direct and educate, the younger partners and associates, and that the higher amount is necessary for it to have the appropriate corrective effect.

RESPONSE OF KRISTY HERNANDEZ AND BRUNELLA PALOMINO (Dckt. 103)

Kristy Hernandez and Brunella Palomino, attorneys for Debtors, state they understand the court's concerns with respect to the Order to Show Cause and do not affirmatively oppose the court imposing corrective sanctions.

DECLARATION OF SARA LITCHNEY (Dckt. 116)

Sara Litchney states that effective April 1, 2014, Litchney Law Firm, A Professional Law Corporation contracted with Hernandez Law Group, Inc. for the sale and transfer of Litchney Law Firm's bankruptcy division. Litchney state that under the agreement all future legal work, client communications and court appearances were to be competently performed by HLG from that date on. Litchney states that on April 1, 2014, LLF provided all current and active LLF bankruptcy clients with notice of the transfer pursuant to Professional Rule Conduct section 2-300. Litcheny states that to aid in the transition of bankruptcy clients from LLF to HLG, Ronald Holland, former LLF supervising bankruptcy attorney was hired by HLG to come on a full time associate attorney with HLG.

Litchney states that on April 11, 2014 an employee of LLF had a phone conversation with the Debtors regarding the transfer in which the Debtors consented verbally to their file being transitioned to HLG, that Krisy Hernandez was their attorney moving forward, and that an attorney (most likely Mr. Holland) from HLG would be appearing at their next scheduled court hearing. The LLF employee advised the Debtors that important paperwork that they would need to carefully review and sign would be sent to them by HLG. Litchney states that Mr. Holland then spoke to the Debtors and informed them of his employment with HLG and a substitution of attorney form was sent by HLG to the Debtors to be signed. Counsel states that she is not sure why the Debtors delayed until June to sign and return the substitution form and that numerous attempts were made to follow up with the Debtors regarding the form and other documents.

Litchney states that numerous attempts to contact the Debtors in this matter regarding their case in an effort to obtain their assistance in responding to the Chapter 13 Trustee's motion to dismiss were made. Litchney states that although this is the only transition case that experienced these types of problems, clearly the lack of appropriate and timely filings with the Court and insufficient motions practice did not exhibit the work to be done by HLG and the seamlesss transition that was intended with the transfer.

Litchney states that she understands that the duty to provide competent legal representation and due diligence resides with herself and the other attorneys involved in this matter as a substitution had not been filed and granted yet even though the clients had consented and the form had been sent. To the extent that the Court believes that a corrective measure such as a monetary sanction is warranted and necessary, Litchney accepts this sanction and apologizes for her part in the inadequacies of this case.

Litchney states that regarding the attorney of record change when Lucas Garcia left LLF’s employment, her office then ran a search on Pacer for all files that were listed in his name and filed the appropriate change in designation of counsel form for those cases terminating him as attorney of record and replacing him with herself. She states that her oversight in not filing a change in designation of counsel form was an unfortunate error and a lack of understanding at how the Pacer system works and how attorney of record designations are made if such designations are not reflected in Pacer.

DECLARATION OF LUCAS GARCIA (Dckt. 119)

Lucas Garcia states that he was an employee of the Litchney Law Firm, P.C. from February 2009 through March 3, 2012, under an employment contract that governed his behavior as employee and attorney. As a term of his employment, Garcia states his interactions with clients were to be limited to the creation of (i.e. the sign up process) and care of (review documents and field client questions) clients of Attorney Sarah Litchney as Managing or Principal attorney of Litchney Law Firm, P.C. Garcia states he never had a controlling, partnership, or ownership stake in Litchney Law Firm, P.C.

Garcia states that during his employment, he shared the responsibility of client intake, sign up, review, and sign off with no less than eight (8) various other attorneys at various times (namely, Robert Thompson, Laurie Alexander, Oliver Greene, Adam Kim, Andrew Grossman, Gabriel Klug, Ronald Holland, and Sarah Litchney), but that all the cases were filed by the

instruction of Attorney Sarah Litchney under her e-filing identification and thereby under her as attorney of record.

Garcia states that around or about November 2010, Ms. Litchney reduced the final reviewing staff to only Garica and required that he file cases under his e-filing (this was based on both an elimination in staff and an order to appear in person in a highly inconvenient location in which the court would not allow her to send him as the debtors representative despite my intimate knowledge of the client and the circumstances).

Garcia states that during the time of his personal supervision, this case was filed, all appropriate motions were filed for valuation and lien avoidance and confirmation was ordered (all in a 6 month period from filing to confirmation). Garica states he was terminated from employment on or about March 3, 2012, without notice or opportunity to properly resign, withdraw, or substitute the clients then filed under his e-filing with another attorney, namely his co-counsel Sarah Litchney. Garcia states that as a result of this termination (especially the unexpected nature of the no notice severing), he was without the legal, financial, and physical resources to contact clients (his review found that no less than 89 clients under Sarah Litchney in addition to clients under his own name would require contact and substitution which in costs of PACER alone would have been precluded by his sudden lack of revenue).

Garcia states he requested that his former employer and co-counsel, Sarah Litchney file all the appropriate substitutions of attorney and notices of change of counsel between March 3rd and 15th, 2012, as well as make the appropriate notices to clients under the California Code of Professional Responsibility. Garcia states that he reasonably inferred that all currently active, yet unfiled, closed, and pending clients had been properly informed and/or properly substituted.

Garcia states that he has yet to determine how many of the 30 open cases were filed with my name as the “/s/” party, but intends to conduct that research after the deadline for this response and to file a notice of appearance on each case and subsequently file a withdrawal as counsel under the same grounds as the one filed in the instant case on any cases that require such an action or a substitution of attorney on all those that can be reasonably reached.

On August 11, 2014, Garcia performed a PACER search of the instant case and noted that he was not listed as attorney of record and so may have not been served with many documents that were relevant to this case prior to the present Order to Show Cause. Garcia determined that the combination of the fact that Sarah Litchney alone was receiving both emailed and mailed notices of the dismissal, combined with a failure to properly substitute herself as the sole representative after severing his employment with Litchney Law Firm, P.C. was the cause of his failure to attend or at the very least respond to the prior actions in this case.

Garcia requests that this court find he has shown good cause why the court should not impose corrective sanctions and instead excuse the order.

DECLARATION OF RONALD HOLLAND (Dckt. 113)

Mr. Holland states his first contact with Mr. Pannetta was on September

21, 1012, at which point he expressed that he was having difficulty making his plan payments. Mr. Pannetta informed Mr. Holland that he wanted to convert his case to chapter 7 and sent him some information about conversion at the beginning of November 2012. Counsel states that other discussions occurred regarding the process for a loan modification and conversion but that was the last he heard from these clients until February 2014.

Counsel states that his next contact with Mr. and Mrs. Pannetta was in the middle February 2014, when they contacted him about difficulty making plan payments and possible missed payments. Counsel states he started the process for a modification of their plan at that time, when Litchney Law Firm received the Motion to Dismiss. Counsel states he immediately made another contact with the debtors to discuss that motion with them and how we could respond and potentially remedy the situation, but hey had not yet provided the information necessary to prepare a Modified Plan. Counsel states he immediately formulated a Modified Plan that would resolve the issue, but the clients stated that their financial condition had changed and that they could not afford the increased payment. In fact, as set forth in documents later filed with the court, they couldn't make the payments that were now called for by the plan without hardship.

Counsel states that On Friday, March 3, 2014, he was informed by Sarah Litchney that he was being terminated from employment and that all of the bankruptcy files had been "sold" to another firm. Counsel was also offered an interview at the new firm the following Monday. Counsel states that during each of my employment periods with Litchney Law Firm, he was the attorney of record on almost every Petition filed. Even on those that he was not, Counsel states he took on all responsibility for the file, including those that had been filed by Lucas Garcia during 2010 through the beginning of 2012. Counsel states he was hired as an associate attorney by Kristy Hernandez.

Counsel states that up to that time, he had not filed any document nor made any appearance on behalf of Mr. and Mrs. Pannetta, despite having been the only attorney working with them on their case since early 2012. Counsel states that at Hernandez Law Firm, it was made clear that he merely worked on files, met with clients and made appearances, but that the cases were the responsibility of Kristy Hernandez. All Petitions were filed in her name and all motions and other documents were also filed in her name. On May 9, 2014, by mutual agreement between Kristy Hernandez and Counsel, he resigned employment with her firm.

Counsel states he is concerned not so much with the substitutions, but with whether Hernandez Law Firm is accurately and adequately tracking the files and representing the clients. At Hernandez Law Firm, Counsel states he was given limited ability to handle what he considered his own cases, since they were mostly being taken from his desk and assigned to another attorney. Counsel states he did and still does take his responsibilities seriously, and carries these cases with him, working to resolve difficult or seemingly impossible situations for clients. However, he states that when he no longer has any access to the file or the client and have been told that another responsible and competent attorney is handling the matter, he has little choice in the matter. Counsel requests that the court not issue sanctions against him.

2. 10-42552-E-13 MICHAEL HARUFF **ORDER TO SHOW CAUSE RE:**
RHS-1 Kristy Hernandez **IMPOSITION OF CORRECTIVE SANCTIONS**
7-11-14 [108]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on July 11, 2014. 46 days notice of the hearing was provided.

The court's decision is to xxxx the Order to Show Cause.

On July 9, 2014, the court conducted a continued hearing on the Motion of the Chapter 13 Trustee to Dismiss the Chapter 13 case filed by Michael J. Haruff ("Debtor"). Debtor commenced this case on August 24, 2010, and is approximately 48 months into a confirmed plan with a 60-month term. On May 29, 2014, the Chapter 13 Trustee filed his motion to dismiss the bankruptcy case (Dckt. 102), alleging that the Debtor was in monetary default for $14,120.00 in plan payments (six months). This is for multiple months of the $2,825.00 required monthly payment under the Chapter 13 Plan from the Debtor. The Motion discloses to the court that the Debtor has paid $105,930.00 into the plan, with the last payment received February 7, 2014.

The Modified Second Amended Plan confirmed in this case provides for the Debtor to pay only his projected monthly income into the plan, with a 0.00% dividend for general unsecured creditors. Based on the testimony and financial information provided under penalty of perjury by the Debtor, after paying all of his monthly expenses, Debtor has only $2,825.00 of projected disposable income to fund the plan. The Plan provides for paying only the creditor whose claim is secured by the senior deed of trust on Debtor's residence (current and arrearage payment), lien stripping the second deed of trust, paying the Chapter 13 Trustee administrative expenses, and paying Debtor's counsel.

Based upon the information previously provided under penalty of perjury, the Debtor could not have the money, and does not have the ability, to produce a lump sum payment of $14,120.00.

The Debtor facing the dire situation of having this case being dismissed out from under him, Debtor's counsel's efforts to oppose the Motion to Dismiss consisted of filing an Opposition, Dckt. 106, which states,

> "1. Debtor intends to bring the present plan payment arrearage current by making a payment in the amount of $14,120.00 prior to the hearing."

Debtor's counsel offers no other opposition or argument to prevent the dismissal. Counsel provides no explanation as to why the defaults have occurred, why the defaults are not likely to continue, and how the Debtor who has no such financial ability will be able to produce $14,120.00 in the month of July 2014 to cure six months of defaults – as well as then having to generate another $2,825.00 for the July 25, 2014 payment which is coming due.

Counsel and the Debtor offer no evidence to support this contention that the Debtor, who does not have the projected disposable income, can produce

$14,120.00 by July 9, 2014. The Debtor has carefully avoided providing his declaration or making any further statements under penalty of perjury.

As Counsel knows, for more than four years this judge has made it know that motions and oppositions shall clearly state the grounds upon which it is being asserted, and admissible, credible evidence must be presented in support or opposition to a motion with respect to any factual matters. The failure to so state and provide evidence appears as an admission that none exists and that the Debtor either (1) has no prospects of producing such monies or (2) has lied in his prior statements under penalty of perjury and actually has $14,120.00 a month in disposable income.

At the hearing, Counsel for the Debtor stumbled through an explanation, for which no evidence was presented to the court, that the Debtor had lost his job, the Debtor has received a lump sum unemployment award, and the Debtor began a new job in May 2014. All of these alleged facts were well known to the Debtor and Counsel, but intentionally not disclosed in the Opposition. Further, the Debtor could have easily provided his declaration testifying under penalty of perjury to these facts – assuming that they are actually true.

ADDITIONAL CASE INVOLVING DEBTOR'S COUNSEL

This lack of response or presentation of a sufficient opposition is not an isolated incidence for Debtor's counsel. In the *Scott Pannetta and Ana Pannetta* Chapter 13 bankruptcy case (10-53003) the court has issued an order to show cause why Kristy Hernandez, principal of the Hernandez Law Group, Inc., should not pay a corrective sanction of $500.00 and other attorneys' in the firm each corrective sanctions of $250.00 for failing to represent a Chapter 13 client in very similar circumstances. In *Pannetta*, no opposition was filed to a motion to dismiss, notwithstanding the hearing on the motion being continued two times. The attorneys in the Hernandez Law Group failed to file a substitution of attorney and began filing modified plans and motion while another lawyer and law firm were the attorney of record. Further, though months passed, the attorneys at the Hernandez Law Group did not file the motion and proposed modified plan, which was orally presented as the basis for opposing the Motion to Dismiss, until the day before the continued hearings on the Motion to Dismiss.

The pattern of conduct in the *Pannetta* case and the present case demonstrate a business practice of this Law Group to not properly appear for clients, not properly file and present oppositions, and not properly prepare and present to the court evidence to support the positions they have taken for their clients. Rather, the "business model" that is emerging is one of doing the minimal work possible (even if it is not the minimum work which is professionally required of the attorneys), through around unsupported contentions, and then rely on the court to make the case for their client. That is not the role of the judge.

STATUS OF DISMISSAL

Though the court could, and possibly should, have dismissed the bankruptcy case at the hearing on the Motion to Dismiss (there being no effective opposition filed for the Debtor), the court did not dismiss the case. Based upon the concurrence of the Chapter 13 Trustee, the court denied the Motion without prejudice.

If the court had dismissed the case on July 9, 2014, the Debtor may well have had substantial claims against one or all of the attorneys for having invested four years into a five-year Chapter 13 Plan and then having it all flushed down the drain. Though protecting attorneys from possible claims is not the directive of the court, the attorneys have been the beneficiaries of the court considering the harm which could and would be inflicted on the Debtor by having his case dismissed due to the lack of prosecution by his attorney(s).

Dismissal of this case on July 9, 2014 (the hearing on the Trustee's Motion to Dismiss) would subject the Debtor to even more harm and distress caused by these attorneys and would, in light of the court's powers to govern the conduct of parties and attorneys, be unnecessarily cruel at this time. It is not a highwater mark for the legal profession when the court, rather than the clients' own attorney(s), appears to have the clients' interests at heart rather than merely the "trafficking in clients" as part of "doing business."

IMPOSITION OF CORRECTIVE SANCTIONS

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).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. 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.

The "Response" to the Trustee's Motion to Dismiss lists three attorneys for the Debtor in this case: Kristy A. Hernandez, Brunella M. Palomino, and Jared A. Day. The "Response" is signed by Kristy A. Hernandez, the principal of the Hernandez Law Group, Inc. Jared A. Day appeared and the July 9, 2014 hearing and orally argued all of the "facts" for which no evidence was provided

to the court.

To address this failure to present an opposition for their client and to correct what is a repeated failure to provide opposition and evidence, the court determines that the following corrective sanctions are necessary to try and deter repetition of such conduct or comparable conduct by others similarly situated. It must be remembered that for more than four years this court has stressed the need to clearly plead the grounds in a motion or opposition, to provide real legal authorities for positions asserted, and to provide credible, admissible evidence (Fed. R. Evid. 601, 602, 802, 803, 901). The multiple reminders from the bench, in tentative and final rulings posted for all to read weekly, and the rulings in open court have not been sufficient to correct this conduct. The corrective sanctions to be imposed are:

Kristy A. Hernandez.....$999.99
Brunella M. Palomino.....$150.00
Jared A. Day.....$150.00

The court ordered Kristy A. Hernandez, Brunella M. Palomino, and Jared A. Day, to appear to show cause as to why the court should not impose these corrective sanctions.

KRISTY HERNANDEZ'S RESPONSE

Counsel Kristy Hernandez requests the court reconsider imposing corrective sanctions in this matter. As part of Hernandez Law Group, Inc.'s ("HLG") standard practice, shortly after the Trustee's Motion to Dismiss was filed and received, Debtor's counsel checked Debtor's payment history on the National Data Center's website to confirm the accuracy of the plan payment arrears listed in the Trustee's Motion. Also, as part of HLG's standard practice, Debtors' counsel contacted Mr. Haruff directly in an effort to determine whether Debtor intended to bring the pending plan current or whether it would be necessary to file a modified plan after confirmation. Debtor indicated that although it would be difficult given the large arrears, he intended to bring the existing plan current because he was at the tail end of his 45-month Chapter 13 plan and preferred not to extend the plan term any longer. Although Debtor's counsel operated under the assumption that Debtor would indeed bring his plan current prior to the court hearing, Debtor's counsel did not immediately know the underlying details of how this would be accomplished. Moreover, as is the situation with many clients who find themselves in plan payment arrears, Debtor's counsel had legitimate skepticism as to Debtor's optimism in this regard.

In an effort to notify the Court and the Trustee of Debtor's intention to bring the plan arrears current prior to the scheduled Court hearing, Debtor's counsel drafted and filed a response to the Trustee's Motion, but did not intend for this filing to be considered an opposition to the Trustee's motion. Rather, Counsel intended the response to inform the Court and Trustee of Debtor's stated intent. At this time, Debtor's counsel merely knew that Debtor had some of the funds to cure the plan arrears and was optimistic that he could come up with the remaining funds. One day prior to the scheduled Court hearing on this matter, Debtor's counsel received a phone call from Debtor indicating that he had cured the plan arrears and provided Debtor's counsel with the specific details on how this was accomplished. Debtor explained that between losing his job, receiving unemployment compensation, and

finding a new job in the same industry at similar compensation, he was able to come up with the remaining funds necessary to cure the plan arrears. Also, Talvinder Bambhra, counsel for the Trustee, called Debtor's counsel indicating that Debtor had cured the plan payment arrears. Given the large amount of the payment, Mr. Bambhra suggested that Debtor's counsel appear at the hearing to explain to the Court how Debtor was able to come up with the funds.

Accordingly, Counsel sent associate attorney Jared Day to the hearing on the Trustee's motion to dismiss believing that an explanation from counsel would be satisfactory in light of the circumstances. In hindsight, Counsel states this was a critical mistake and that counsel should have filed a supplemental declaration one day prior to the hearing, when HLG became aware of the specific details relating to Debtor's ability to cure the plan arrears and/or insisted that Debtor obtain leave from work to attend the hearing with Mr. Day to provide live testimony in this regard.

Counsel states that Scott and Ana Pannetta Chapter 13 bankruptcy case (Case No. 2010-53003) seemingly establishes a history of poor client representation by HLG but that the Pannetta case is distinguishable from the case at hand. In Pannetta, that case was part of a practice transfer from Litchney Law Firm to HLG. The clients in Pannetta had no prior relationship to HLG, and the Trustee's motion to dismiss in that matter came at the apex of the practice transition. Counsel states that in the instant case, Mr. Haruff has been a long-term client of HLG, since 2010. Additionally, Counsel states HLG attorneys and staff have been actively engaged with the Chapter 13 Trustee on the Haruff matter throughout the case always keeping the Trustee up to date on the status of Debtor's intentions with regard to Plan payments.

Attorneys for HLG understand that declarations are required for written oppositions and/or responses and has a routine practice of doing so. However, in this particular case, Counsel mistakenly believed that filing a response (absent a declaration) to the Trustee's motion to dismiss was the right thing to do even without knowing the specific details regarding how Debtor would come up with the funds to cure the plan arrears. Again, HLG should have filed a supplemental declaration and/or have the client attend the hearing and will make every effort to do so in all future cases. Nevertheless, understanding the Court's concerns, HLG accepts the Court’s decision in this matter.

3. 10-53003-E-13 SCOTT/ANA PANNETTA — CONTINUED MOTION TO MODIFY PLAN
HLG-4 Kristy Hernandez — 7-8-14 [88]

CONT. FROM 8/19/14

Final Ruling: No appearance at the August 26, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No 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

July 8, 2014. 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 continue the hearing on the Motion to Modify Plan to September 9, 2014 at 3:00 p.m.

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

The Chapter 13 Trustee opposes the motion on the basis that the income and expense information for the Debtor as of the August 2014 confirmation hearing is stated under penalty of perjury to be exactly the same as at the time of filing on 12-17-10. The Debtor indicates a 401K loan repayment deduction of $257.23 ending 9-25-13. Additionally the debtor states in the declaration that "My full-time employment was terminated and I have been reduced to a twenty-four hour part-time employee with decreased wages from $15.46 per hour to $11.00 per hour." Trustee states the debtor has not submitted recent pay stubs in support of the schedule. Additionally the debtors stated in item 3 of the declaration "our monthly household income has remained the same."

Trustee also states the information for debtor 1 is reported incorrectly on the form. A second job is reported net on line 8h. The instructions state this is to be combined on lines 2 through 7. The Trustee notes the schedule reports a deduction for a TSP loan in the amount of $71.98 which was to have ended 6-21-13. The Trustee is unable to compare this Schedule I with the one filed at th time of filing. The Trustee does note gross wages are reported as $5,450.36 versus $4,401.08 at the time of filing. Payroll deductions increased from $1,881.67 to $4,076.96. The debtor additionally reports a second job net income of $1,220.37 on 8h. The Trustee states the debtor has not submitted recent pay stubs in support of the schedule.

Additionally, the Trustee states that although the Schedule J reflects a 25 year old niece and her daughter live with the Debtors, no income is reported on line 8c. The Trustee has the following concerns with the supplemental Schedule J, Exhibit B:

The debtors report on line 4- home mortgage expense of $1,082.00 versus $1,992.00 at the time of filing. The debtors' state in item 3 of their declaration the mortgage payment was reduced from $1,992.00 to $1,083.00. The Trustee assumes this is the result of a loan modification but cannot find court approval for any modification. Total expenses per the supplemental Schedule I are $4,600.00. Expenses adjusted at the time of filing for the decrease in mortgage payment are $3,800.00 ($4,710.00- $910.00 mortgage decrease). Thus,

Trustee states the expenses other than the mortgage have increased $800.00. The Trustee notes $425.00 of this increase is in transportation and $155.00 is in auto repairs and maintenance.

DEBTOR'S AMENDED PLEADINGS

Debtor filed a response and several amended pleadings, including a motion, declaration, Schedule I, Schedule J. Debtors also state that a loan modification resulted in Debtor's monthly mortgage expense decrease but that Debtors never obtained court approval because they "were not aware they needed to do so." Counsel for Debtor states a motion will be filed shortly.

First, it appears that Debtors have entered into a loan modification without authorization from this court. Declaration, Dckt. 111. By virtue of the secret, undisclosed loan modification, it appears that the Debtors have had $900.00 of additional projected disposable income for a number of months which must be properly accounted for in this case. Notwithstanding the other issues this raises regarding Debtor conduct, without approval of the loan modification on which the plan relies, the plan cannot be confirmed. A motion to approve the loan modification does not appear to have been filed to date.

Second, Debtors state on June 2012 they purchased a 2006 Toyota Corolla for $2,500, but did not obtain court approval prior to making the purchase. Declaration, Dckt. 111. Debtors state they will file a motion for approval. A review of the court docket shows that one has not been filed to date. Again, the court cannot confirm a plan in which Debtors have purchased a vehicle without court approval and have acted without regard for the Bankruptcy Code. FN.1.

FN.1. This is a very troubling, and troubled case, relating to all of the attorneys who purport to have represented the Debtors, and who now purport to not representing the Debtors. How Debtors represented by counsel could have believed, in good faith that no court approval for modifying loans outside of the plan and spending money to buy vehicles is one which will required clear, detailed explanations by not only the Debtors, but the various attorneys who have been or conceivably could seek to be paid for that representation.

Another troubling aspect of this case and its prosecution by the Debtors and the multiple attorneys representing the Debtors is that out of $8,381.79 in monthly gross income, the Chapter 13 Plan proposes monthly plan payments of $23 a month for 3 months, $121.00 for 1 month, $56.00 for 7 months, $65.00 for 1 month, $56.00 for 22 months, $57.00 for 2 months, $346.00 for 4 months, and then $205.00 for 20 months. In looking at the latest Amended Schedule I the Debtors are diverting from their gross income $1,016 for voluntary retirement and "Allotment SV." These are in addition to Debtor's federal government defined benefit retirement plan and TSP loan repayment. For Amended Schedule J the Debtors list $650.00 for transportation and $100 for charitable contributions (which no evidence of actual, historical contributions). Dckt. 126.

Third, it does not appear Debtor has provided pay stubs to the Trustee or otherwise to support the contention that co-debtor has been reduced to a part-time position with decreased wages.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration on August 22, 2014. In the declaration, the Debtor states that on August 18, 2014, Debtor filed a Motion to Approve Loan Modification which is scheduled for hearing on September 9, 2014 at 3:00 p.m. Dckt. 127 - 31. The Debtor alleges that there was no court authorization for the loan modification because the Debtor did not provide the Loan Modification Agreement to their attorneys until Monday, August 11, 2014. The Debtor states that on August 22, 2014, the Debtor filed a Motion to Incur Unsecured Financing for the purchase of the 2006 Toyota Corolla which is scheduled to be heard on September 9, 2014. The Debtor notes that on August 11, 2014, the Debtor filed Supplemental Exhibits which included co-Debtor's most recent pay stubs to reflect that co-Debtor has been reduced to part-time employment with decreased wages. Dckt. 109.

The Supplemental Declaration also discuses the Chapter 13 Proposed Monthly Plan Payment and the discrepancies within the Proposed Monthly Plan Payment. Debtor states that the Debtor's attorneys believed the "Allotment, SV" constituted the Debtor's mandatory contribution to his pension. However, upon further review of the pay stubs, the Debtor testifies that the Debtor's attorneys now realize only the "Retire, FERS" in the amount of $16.10 bi-weekly constitutes Debtor's mandatory contribution to his pension. Debtor's attorneys are currently working with Debtor for a breakdown of the "Allotment, SV" and the Debtor understands his plan payment will need to increase. The Debtor testifies that due to the Debtor's federal government employer no longer providing certain retirement plan/funding, the Debtor opted to contribute about $40.24 bi-weekly to his TSP Savings. About a year ago, the Debtor's employer also provided him with the option of a Roth IRA, which Debtor contributes about $60.36 bi-weekly. The Debtor testifies that he understands he cannot divert funds for voluntary retirement plans, and understands his plan payment will need to increase. The Debtor testifies that the Debtors' attorneys are currently working with the Debtor to file a Third Modified Chapter 13 Plan prior to the Trustee's Motion to Dismiss scheduled to be heard on September 10, 2014.

Because a Motion to Incur Unsecured Financing and Motion to Approve Loan Modification are both scheduled for hearing on September 9, 2014 at 3:00 p.m., the court continues the instant motion to be heard in conjunction with the two pending motions.

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 hearing on the motion is continued to September 9, 2014 at 3:00 p.m.

4. 13-35604-E-13 RENE/MARIA RESTUA MOTION TO CONFIRM PLAN
SLH-10 Seth Hanson 7-11-14 [101]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 46 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 grant the Motion to Confirm the Amended Plan.

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

The Chapter 13 Trustee opposes the motion on the basis that the proposed plan relies on the Motions to Avoid Liens of Target and HSBC, set for hearing on August 26, 2014. The court having granted the Motions to Avoid, the objection is overruled.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 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 February 6, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. 13-35604-E-13 SLH-8 RENE/MARIA RESTUA Seth Hanson

MOTION TO AVOID LIEN OF HSBC BANK NEVADA, N.A. 7-11-14 [91]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 46 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 granted.

This Motion requests an order avoiding the judicial lien of HSBC Bank

Nevada N.A. (“Creditor”) against property of Rene Pano Restua and Maria Anita Restua (“Debtor”) commonly known as 2418 Shawnee Court, Fairfield, California (the “Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of $4,199.07. An abstract of judgment was recorded with Solano County on June 14, 2011, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of $464,000.00 as of the date of the petition. The unavoidable consensual liens total $515,501.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor’s exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of HSBC Bank Nevada N.A.(“Creditor”), California Superior Court for Solano County Case No. FCM115643, recorded on June 14, 2011, Document No. 201100052626 with the Solano County Recorder, against the real property commonly known as 2418 Shawnee Court, Fairfield, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. 13-35604-E-13 RENE/MARIA RESTUA
SLH-9 Seth Hanson

MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
7-11-14 [96]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 46 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 granted.

This Motion requests an order avoiding the judicial lien of Target National Bank ("Creditor") against property of Rene Pano Restua and Maria Anita Restua ("Debtor") commonly known as 2418 Shawnee Court, Fairfield, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,522.17. An abstract of judgment was recorded with Solano County on August 5, 2010, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $464,000.00 as of the date of the petition. The unavoidable consensual liens total $515,501.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore,

the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Target National Bank ("Creditor"), California Superior Court for Solano County Case No. FCM105913, recorded on August 5, 2010, Document No. 201000070888 with the Solano County Recorder, against the real property commonly known as 2418 Shawnee Court, Fairfield, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. 12-41916-E-13 LAMONTE/CAROL LOVE — MOTION TO MODIFY PLAN
JLK-1 James Keenan — 6-25-14 [25]

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 June 25, 2014. By the court's calculation, 62 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Lamonte Love and Carol Love ("Debtor") filed the instant motion on June 25, 2014 seeking to modify the Plan to increase monthly payments from $1,100.00 to $1,350.00. Debtor alleges that the increase in proposed plan payments is due to an anticipated increase in income. However, the Debtor does not provide any evidence on the definitiveness of the increase or any amended Schedules I and J to reflect such an increase in income.

The Chapter 13 Trustee filed an objection on August 11, 2014, arguing that the Debtor has not provided sufficient evidence to support the feasability of the proposed increase plan payments.

REVIEW OF MOTION

The court begins with a review of the Motion, which states the grounds upon which the requested relief pursuant to 11 U.S.C. §§ 1329, 1325(a), and 1322. The Debtors state that they are seeking to amend the plan to provide for the priority claim of the Franchise Tax Board. Debtor proposes to increase the plan payment to $1,350.00 for the final thirty months of the proposed modified plan. The Motion asserts that Debtor's income and expenses are set forth in Schedules I and J, filed on December 27, 2012.

The Declaration of Lamonte and Carol Love (Debtor) is filed in support of confirmation. Dckt. 28. Debtor testifies that based on unstated income increases, the plan payments are to be increased to $1,350.00. The Declaration continues to state Debtor's personal finding of fact and conclusion of law that "We have filed the petition in good faith in an effort to resolve our debt problems. We have proposed the Chapter 13 Plan in faith. We believe [but apparently do not affirmatively state] that the proposed Chapter 13 Plan is in the best interests of all concerned. Further, we believe [but apparently do not affirmatively state] that the terms of the Plan are not forbidden by any provision of the law;...." FN.1.

FN.1. No basis is shown for Debtor, or either of them, having the legal knowledge necessary to provide such "testimony." In such situations, the testimony by a debtor under penalty of perjury as to such legal findings and conclusions put in question the credibility of all their testimony. Instead of truthfully and accurately testifying only as to their personal knowledge, it appears that Debtor, and each of them, have the "I sign whatever is put in front of me if you tell me it helps me win" approach to testifying under penalty of perjury.

Debtor further testify that their projected disposable income (legal conclusion), as calculated by their attorney (showing that Debtor has no personal knowledge) has been devoted to the plan. What is missing from the

Declaration is any testimony as to Debtor's income and expenses, or how projected disposable income.

The only financial information provided by Debtor is now almost two years old. The Motion affirmatively states that such information has changed, with both income and expenses being increased. Through these unstated increases, Debtor now states that the payments will be increased to $1,350.00, because that is what Debtor states is the projected disposable income.

Debtor has not provided the court, creditors, and the Chapter 13 Trustee with current financial information. The court cannot determine the projected disposable income for confirmation of a modified plan. Debtor has not carried the burden of proof for confirmation of a modified plan.

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.

8. 14-24616-E-13 JGD-3 NICOLE GOLDEN AND STEPHEN ALTER John Downing — MOTION TO CONFIRM PLAN 7-8-14 [35]

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 Not 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 July 8, 2014. By the court's calculation, 49 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.

SERVICE OF PROCESS AND NOTICE

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 address 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.

DEBTOR'S MOTION

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

Nicole Golden and Stephen Alter ("Debtor") filed the instant motion on July 1, 2014 seeking to confirm their First Amended Chapter 13 Plan.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an objection on August 6, 2014, arguing that the First Amended Chapter 13 Plan cannot be confirmed because: 1) Debtor is delinquent in plan payments; (2) the Debtor did not file the First Amended Chapter 13 Plan in good faith or in Debtor's best efforts; and (3) Debtor failed to properly complete the required Statement of Financial Affairs of the petition.

The Chapter 13 Trustee alleges that, under 11 U.S.C. §1325(a)(6), the First Amended Chapter 13 Plan cannot be confirmed because the Debtor cannot make payments under the Plan's terms. At the time of the objection, the Chapter 13 Trustee states that the Debtor is $2,140.00 delinquent in plan payments. As of September 25, 2014, the plan payments are to increase by $200.00. Due to the delinquencies in the Plan, the Trustee objects to the confirmation of the Plan.

The Chapter 13 Trustee argues that the plan should not be confirmed under 11 U.S.C. §1325(a)(3) because the Debtor is over the median income on Form B22C, the Statement of Current Monthly Income. The Opposition does not state the significance of this contention.

Lastly, the Chapter 13 Trustee argues that the Plan cannot be confirmed because Debtor did not complete the Statement of Financial Affairs. Specifically, Debtor fails to list Wells Fargo under the "Payments to Creditors" section of the Statement of Financial Affairs while the Plan lists Wells Fargo is listed in Class 4 of the Plan. Furthermore, Debtor failed to list any information under "Property held for another person" on Statement of Financial Affairs concerning the 2013 Highlander in the Debtor's hold or control. The Chapter 13 Trustee argues that, under 11 U.S.C. §1325(a)(6), the plan should not be confirmed because the Debtor failed to properly complete the Statement of Financial Affairs.

U.S. BANK NATIONAL ASSOCIATION'S OBJECTION

U.S. Bank National Association, as Trustee for Banc of America Funding Corporation, Mortgage Pass-Through Certificates, Series 2006-G ("Creditor") filed an objection on August 8, 2014, arguing that the Plan cannot be confirmed because the Plan does not provide for the full value of Creditor's claim and does not promptly cure Creditor's pre-petition arrears.

Creditor argues that under 11 U.S.C. §§ 1325(a)(5)(B)(ii) the Plan cannot be confirmed because the plan fails to provide for the payment of Debtor's pre-petition arrears on Creditor's secured claim in the amount of $5,399.88.

Creditor argues that under 11 U.S.C. §§ 1322(b)(5) the Plan cannot be confirmed because the Plan does not provide to cure any of Debtor's pre-petition arrears on Creditor's secured claim in the amount of $5,399.88.

DISCUSSION

Upon review of the motion, oppositions, and supporting document, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed. Debtor did not properly serve the IRS. Debtor is delinquent on payments. Debtor has not properly completed required forms. Finally, Debtor did not provide for or cure pre-petition arrears in the Plan.

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

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

9. 14-26820-E-13 JUVENAL ZAMORANO
TOG-1 Thomas Gillis

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
7-29-14 [15]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Bank of America, N.A., Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 29, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion to Value filed by Juvenal Zamorano, ("Debtor") to value the secured claim of Creditor is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6140 Seyferth Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $78,283.00 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 senior in priority first deed of trust secures a claim with a balance of approximately $257,750.00. Creditor's second deed of trust secures a claim with a balance of approximately $14,150.00. 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 Juvenal Zamorano, "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 Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 6140 Seyferth 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 $78,283.00 and is encumbered by a senior lien securing claims in the amount of $257,750, which exceed the value of the Property which is subject to Creditor's lien.

10. 12-38028-E-13 JANIS FORCE **MOTION TO MODIFY PLAN**
WW-4 Mark Wolff **7-9-14 [58]**

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 48 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 July 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. 11-42129-E-13 LBG-1 BRYAN LESLIE Stephen J. Johnson
AMENDED MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
7-25-14 [175]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Bank of America, N.A., parties requesting special notice, and Office of the United States Trustee on July 25, 2014. By the court's calculation, 32 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 Bank of America, N.A., ("Creditor") is granted.

The Motion to Value filed by Bryan Leslie, ("Debtor") to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 24858 Oro Valley Road, Auburn, California ("Property"). Debtor seeks to value the Property at a fair market value of $200,000.00 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).

Debtor also offers the Declaration of Gia Grim, a licensed real estate appraiser with 14 years' experience, who opines that the value of the property is $200,000.

The senior in priority first deed of trust secures a claim with a balance of approximately $390,529.00. Creditor's second deed of trust secures a claim with a balance of approximately $51,483.00. 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 Bryan Leslie, "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 Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 24858 Oro Valley Road, Auburn, 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 $200,000.00 and is encumbered by a senior lien securing claims in the amount of $390,529.00, which exceeds the value of the Property which is subject to Creditor's lien.

12. 09-38433-E-13 GARY/SHERYL RAWLINSON
RLC-3 Stephen M. Reynolds

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEPHEN M. REYNOLDS FOR STEPHEN M. REYNOLDS, DEBTOR'S ATTORNEY
7-24-14 [123]

Tentative Ruling: The Motion for Compensation 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, parties requesting special notice, and Office of the United States Trustee on July 24, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Compensation 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 Compensation is denied without prejudice.

FEES REQUESTED

Stephen Reynolds, Counsel for the Debtors, moves the court for compensation in this case. The period for which the fees are requested is January 6, 2012 through July 21, 2014. Counsel was previously awarded $3,500.00 pursuant to the court's no-look fee guidelines.

Description of Services for Which Fees Are Requested

Counsel requests fees and expenses in the sum of $3,750.00 for post-petition services including:

A. Case Administration, 3 hours at $300.00 an hour equaling $900.00;

B. Plan Statement, 4 hours at $300.00 an hour equaling $1,200.00;

C. Litigation, 2 hours at $300.00 an hour equaling $600.00;

D. Fee Application, 3.5 hours at $300.00 an hour equaling $1,050.00.

Counsel has not specifically stated the services provided for under each of these headings but instead states that Counsel:

A. Prepared, reviewed, finalized and filed Chapter 13 schedules and Statements of Financial Affairs.

B. Communicated with Debtor regarding the case and determined strategy.

C. Communicated with representatives of various parties regarding claims, and case status.

D. Communicated with the Chapter 13 Trustee.

E. Attended the creditor's meeting and additional hearings in this case.

F. Communicated with Debtors regarding ongoing strategy and case development

G. Prepared and filed six Chapter 13 plans with supporting pleadings.

H. Filed two applications to incur debt with supporting pleadings.

I. Prepared and filed a motion for additional fees and expenses.

Counsel was compensated by the "no-look fee" of $3,500.00. However, Counsel argues that due to "unforseen and exceptional development. . . that far exceed the normal "wrinkles" anticipated in a Chapter 13 case," Counsel is entitled to supplemental compensation in the sum of $3,750.00. Dckt. 123.

Citing events such as Debtor's divorce, remarriage of Debtor, obtaining court approval for the financing of a vehicle and residence, and the loss of Debtor's long term employment, Counsel argues that these were outside the scope of typical Chapter 13 representation and justifies the additional fees.

TRUSTEE'S STATEMENT

The Chapter 13 Trustee is not certain that the total fees requested in the motion should be approved by the court based on three reasons. First, Trustee states that three modified plans have been filed, along with four Motions to Modify as follows:

A. Debtors Motion to Modify LR-2 was filed on January 6, 2012 and denied at the hearing held February 14, 2013. The minutes

indicate that the Motion was denied based on the Trustee's Objection. Dckt. 72.

B. Debtors Motion to Modify LR-3 was filed February 23, 2012. The Trustee opposed the confirmation of the Plan and Counsel filed a Notice of Withdrawal of Third Amended Chapter 13 plan on March 13, 2012. Dckt. 83.

C. Debtors Motion to Modify RLC-2 was filed on March, 24 2014 and denied at the hearing held on May 20, 2014. The minutes indicate that the Motion was denied based on the Trustee's Objection. Dckt. 117.

Second, the Trustee states that a Motion for Hardship Discharge, RLC-1, was filed on February 6, 2014. The Trustee opposed the Motion based on insufficient evidence. The motion was denied on May 20, 2014. Dckt. 119.

Lastly, the Trustee states that Counsel has submitted a declaration stating that "the time records [for the additional services] were not contemporaneous records, but were created through a review of the docket and counsel's calendar." Dckt. 125. Additionally, the Trustee notes that Counsel is seeking compensation in the amount of $1,050.00 for the preparation of the instant motion.

DID NOT PROVIDE TASK BILLING ANALYSIS

In seeking the approval of fees, the court requires that applicant provide a task billing analysis in which the various activities, time charged, and fees by task area is provided. These can include Administrative Work (such as applications to employ, communicating with the Clerk's office for procedure, and the organizational activities of counsel); motions for relief from the stay; motions for sale, use or lease of property, for obtaining credit, or abandoning property; preference and avoiding adversary proceedings, other adversary proceedings; plans, disclosure statements, and confirmation; and the like. Within each of the task areas a brief description is provided and the time and fees relating to those items. For the present Motion, applicant appears to have provided vague descriptions of tasks.

Exhibit 1 filed in support of the Motion is Counsel's retrospective billing for generic and nonspecific services, leaving it for the court to mine the document to construct a task billing analysis. The court declines the opportunity, leaving it to applicant who intimately knows the work done and his billing system to correctly assemble the information. Furthermore, the fact that the Counsel is submitting billing records based on a "review of the docket and counsel's calendar" raises suspension on the accuracy and veracity of the services allegedly provided for Debtors by Counsel. The generic, nonspecific, and arguably superfluous services that Counsel is attempting to get additional compensation for in addition to the $3,500.00 "no-look fee" Counsel is receiving does not contain sufficient support for this court to double the amount of compensation Counsel is expected to receive already.

"NO-LOOK" FEES

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the

services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, 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. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Counsel is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 46. The order confirming the Plan was prepared by Counsel.

If Counsel believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be

requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

Counsel's declaration admits that the decision to accept the set fee was improvident because the prosecution of the case within the scope of the set fee was more complicated than he projected at the start of the case. Such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he or she spends more time than projected. However, in cases when the set fee works to be a bonus (Counsel spending less time than equal to the set fee), Counsel does not state that the rules require him to give the extra amount back. The set fee exists to allow Counsel to elect to accept such fees, taking the bonus in some cases and spending more time in other cases – but in the end the over and under amounts balance out.

It may be that Counsel could, consistent with Local Bankruptcy Rule 2016-1(c)(3), seek the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. But Counsel must seek such additional fees, not ignore the agreed set fee and Local Bankruptcy Rule 2016-1. In seeking such additional fees, Counsel shall provide the court with the standard lodestar analysis (even if from reconstructed records), which will include a statement as to the benefit of the services to the Debtor and estate.

However, Counsel's request to convert his set fee agreement into a hourly agreement for all services is not proper. 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 for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the application of Stephen Reynolds is denied without prejudice.

13. 14-22734-E-13 MOH-2 GERALD/VIRGINIA MARTINEZ Michael O. Hayes

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC 8-12-14 [69]

Tentative Ruling: The Motion to Avoid Judicial Lien 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 12, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of ASSET Acceptance, LLC("Creditor") against property of Gerald and Virginia Martinez

(“Debtor”) commonly known as 197 Connors Avenue, Chico, California (the “Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of $25,597.09. An abstract of judgment was recorded with Butte County on January 15, 2008, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of $196,667.00 as of the date of the petition. The unavoidable consensual liens total $104,022.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor’s exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of ASSET Acceptance, LLC(“Creditor”), California Superior Court for Butte County Case No. 140768, recorded on January 15, 2008, Document No. 2008-0001616 with the Butte County Recorder, against the real property commonly known as 197 Connors Avenue, Chico, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. 10-53637-E-13 G./KATHLEEN ULBERG
JGD-6 John G. Downing

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PACIFIC CREST PARTNERS, INC. AND JOHN MUDGET
7-14-14 [154]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is granted.

G. Wendell Ulberg and Kathleen Ulberg, the Chapter 13 Debtors ("Movant") request that the court approve a compromise and settle competing claims and defenses with Pacific Coast Partners, Inc. ("PCP") and John Mudget ("Mudget"). The claims and disputes to be resolved by the proposed settlement arise from an Adversary Proceeding No. 11-02122 and Superior Court Case No. TCV0001963 relating to the nonjudicial foreclosure of the Movant's home located at 1382 Mineral Springs Trail, Alpine Meadows, California (the "Property"). The Movant sued Bank of America, N.A., PCP, Mudget, and Reconstruct Company, N.A.. The Movant was seeking compensatory damages and to set aside the trustee's deed. PCP filed Case No. TCV0001963 in Placer County Superior Court alleging unlawful detainer by the Movant. The Release and Settlement Agreement seeks to resolve all of the disputes, including the pending Adversary Proceeding and the unlawful detainer action as to PCP and Mudget.

BACKGROUND OF ADVERSARY PROCEEDING NO. 11-02122 AND SUPERIOR COURT CASE NO. TCV0001963

Movant filed the Adversary Proceeding on February 22, 2011 against Bank of America, N.A., PCP, Mudget, and Reconstruct Company, N.A.. The Movant alleged eight causes of action against Settlor in the Adversary Proceeding: (1) fraud as to Bank of America, N.A.; (2) negligent misrepresentation as to Bank of America N.A.; (3) unfair business practices as to Bank of America, N.A. and Reconstruct Company, N.A.; (4) intentional interference with contractual relations as to Reconstruct Company, N.A., PCP, and Medget; (5) set aside, rescind or cancel trustee's deed as to all defendants; (6) quiet title as to

all defendants; (7) declaratory relief as to all defendants; and (8) injunction as to PCP and Mudget.

On March 17, 2011, the court granted PCP's motion for relief from the automatic stay. On April 28, 2011, the court issued a preliminary injunction leaving the Movant in possession of the Property. The order required the Movant to pay the Chapter 13 Trustee $2,000.00 per month which would be retained and used to pay PCP damages if it was later determined that PCP was wrongfully enjoyed ("Injunction Funds").

According the Trustee who filed a Response to the instant motion, there is currently $80,700.00, noting that the Trustee is to receive 3.7% dividend of receipts which would leave $77,714.10. Dckt. 163. The Trustee also notes that the Movant is delinquent in plan payments in the amount of $7,450.00.

On May 10, 2011, PCP filed a counter claim alleging: (1) trespass on the Property by the Movant; (2) intentional interference with prospective economic advantage as to the Movant; (3) declaratory relief as to the Movant; (4) breach of contract as to Bank of America, N.A.; and (5) indemnity as to Bank of America, N.A. and Reconstruct Company, N.A..

On November 29, 2011, the court granted the motion to dismiss filed by Bank of America, N.A. as to the third and seventh causes of action.

On October 22, 2013, the court ruled on the motion for summary judgment filed by Bank of America, N.A. and Reconstruct Company, N.A. and issued its proposed memorandum opinion and decision. On October 22, 2013, the District Court entered an order adopting the court's proposed opinion and entered summary judgment as to the remaining causes of action against Bank of America, N.A. and Reconstruct Company, N.A.

On June 5, 2014, the court heard the motion for summary judgment and the motion to vacate the preliminary inunction filed by PCP. The court granted the motion for summary judgment in part and granted the motion to vacate the preliminary injunction. The court ordered PCP to file a motion for an order determining costs and damages pursuant to Federal Rule of Civil Procedure 65.

PCP has filed an unlawful detainer action, Superior Court Case No. TCV0001963, against the Movant which is currently pending in Placer County Superior Court.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 157):

1. The Movant's Obligations: Promptly upon court approval of this agreement, the Movant shall do as follows:

    a. Take no further action to claim ownership or right to possession of the Property

    b. Permit a representative of PCP to inspect and photograph the Property on 48 hours notice;

c. Authorize the Chapter 13 trustee to release all of the Injunction Funds directly to PCP;

d. Authorize the filing of the Stipulation for Judgment of Possession; and

e. Authorize the filing of the Stipulation for Dismissal of Adversary Proceeding and Proposed Order attached as Exhibit 2, Dckt. 157.

2. PCP's Obligations: Promptly upon court approval of this agreement, the PCP shall do as follows:

a. Allow the Movant to remain in possession of the Property until September 30, 2014;

b. Pay the Movant $3,000 if the Movant (1) vacate the Property on or before August 31, 2014; and (2) leave the Property free of any intentional damages;

c. Pay the Movant $1,000 if the Movant (1) vacate the Property on or before September 30, 2014; and (2) leave the Property free of any intentional damages; and

d. Authorize the filing of the Stipulation for Dismissal of Adversary Proceeding attached as Exhibit 2, Dckt. 157.

3. Retention of Jurisdiction to Resolve Disputes: The United States Bankruptcy Court.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. PCP and Mudget have granted a corresponding release for Debtor and the Estate.

Movant concludes the allegations in the motion, stating,

> While there may be little left to litigate in the adversary proceeding, every issue in this case has required far more time to resolve than anyone expected. This settlement resolves all remaining issues; eliminates further litigation expenses; eliminates further liability to [Movant], pays [Movant] $1,000 to $3,000 and allows [Movant] to reside in the Mineral Springs House without payment.

Dckt. 154.

This Adversary Proceeding is one in which the court retains familiarity as to the issues presented, prior proceedings, and what remains as to any issues. Though most issues in the Adversary Proceeding were contested and resolved only by rulings from this court and the District Court, these parties have found a way to reach agreement and bring this litigation to a conclusion.

The In re *A & C Props.* elements are satisfied in this situation. The die is cast for the Plaintiff-Debtors as to their ownership claim, but they have provided PCP with some value to support a settlement of the final possession issues. The only interests remaining to be litigated are those of the Plaintiff-Debtors, which have no value for the estate.

The court grants the Motion and approves 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 for Approval of Settlement filed G. Wendell Ulberg and Kathleen Ulberg, the Chapter 13 Debtors ("Movant") 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 for Approval of Settlement is granted, with the terms and conditions of the Settlement stated in the Settlement Agreement filed as Exhibit B (Dckt. 157) in support of the Motion.

15. 14-26838-E-13 BLG-1 TERRY HAMILTON AND NICHOL ARANDA Paul Bains

MOTION TO CONFIRM PLAN 7-15-14 [12]

Final Ruling: No appearance at the August 26, 2014 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 July 15, 2014. 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). 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 Amended Plan to September 9, 2014 at 3:00 p.m. to be heard concurrently with Debtors' Motion to Value.

The Motion to Confirm Plan filed by Terry Hamilton and Nichol Aranda ("Debtor") seeks the court to confirm Debtor's First Amended Plan.

The Motion is supported by the Declaration of Terry Hamilton and Nichol Aranda . 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.

TRUSTEE'S OPPOSITION

Trustee opposes the motion on the basis that the Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Trustee argues that the plan relies on the Motion to Value, BLG-2, which is set for hearing on September 9, 2014 at 3:00 p.m..

DEBTOR'S RESPONSE

Debtor responded asking to have the instant motion continued to September 9, 2014 at 3:00 p.m. to be heard concurrently with Debtors' Motion to Value, BLG-2.

DISCUSSION

Based interrelatedness of the Motion to Confirm Plan and Motion to Value and the concerns raised by Trustee, the court continues 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 Approve the Loan Modification filed by Terry Hamilton and Nichol Aranda 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 hearing on the motion is continued to September 9, 2014 at 3:00 p.m. to be heard concurrently with Debtors' Motion to Value.

16. 14-25740-E-13 MARIO RILEY — MOTION TO INCUR DEBT
CAH-1 Aaron Koenig — 7-18-14 [19]

Tentative Ruling: The Motion to Incur Debt 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 - No Opposition Filed.

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 July 18, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Motion to Incur Debt is granted, with the Debtor authorized to purchase a vehicle, but not authorized to incur debt.

The motion seeks permission for Debtor to purchase a 2013 Honda Accord which the total purchase price is $27,747.74, with monthly payments of $443.11. While styled as a "Motion to Incur Debt," on its face the Motion states that "The Debtor will not be signing onto loan, only his father and his non-filing spouse will be co-signers. Motion ¶ 4, Dckt. 19.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

However, based on the evidence provided, it does not appear that Debtor will be signing the loan or making the car payments. The Declaration provided by Debtor's father states that only his father and non-filing spouse will be the co-signers on the loan. Additionally, the father has stated in his declaration that he will be making the monthly payments of $443.11. Dckt. 21.

The court reads the motion as not one to incur debt, but to purchase a vehicle. The Debtor's father is to incur the debt and make the monthly payments. The Debtor's non-debtor spouse is to co-sign the loan.

For the relief requested the court grants the motion and order that (1) the Debtor may have the vehicle purchased for him, (2) Debtor is not authorized to incur any personal liability for the monies borrower or credit obtained to purchase the vehicle, (3) only the Debtor's father is authorized to incur the debt for the purchase of the vehicle, and not the Debtor's spouse. If the spouse, who is a non-debtor spouse, were to co-sign the loan, she could effectively be creating an indirect liability through the community property interests of the Debtor and non-debtor spouse for the Debtor's vehicle.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Mariou Joseph Riley, the Debtor, is authorized to purchase a 2013 Honda Accord, with a purchase price of not more than $28,000.00 and monthly payments of of not more than $450.00.
>
> **IT IS FURTHER ORDERED** that the Debtor is not authorized to incur any debt or incur any personal liability for the purchase of the vehicle. All financing for the vehicle shall be obtained by and an obligation of only Joseph Riley, the Debtor's father. Joseph Riley shall make the monthly payments for the loan obtained to purchase

the vehicle. The court does not authorize the Debtor's spouse, Wendy Rochelle Riley, to co-sign or be liable for the loan obtained to purchase the vehicle.

17.	**14-25740-E-13**	**MARIO RILEY**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
	DPC-1	**Aaron Koenig**	**7-10-14 [15]**

CONT. FROM 8-5-14

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2014. By the court's calculation, 26 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.

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

PRIOR HEARING

David P. Cusick, Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot afford to make the Plan payments required under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors on

July 3, 2014 that he purchased a 2013 Honda Accord, which adds a monthly auto payment of $443.00 and is not listed on Schedule J. Furthermore, Debtor has listed the Department of Motor Vehicles in Class 5 of the Plan, but has failed to list the nature of the priority. Trustee is not certain if this debt is entitled to be paid in Class 5 of the Plan.

DEBTOR'S RESPONSE

Debtor states that his father will be making the monthly car payments and that a Motion to Incur Debt has been filed and set for hearing. Debtor has attached his father's declaration as Exhibit A. Debtor explains that the debt owed to the Department of Motor Vehicles is a priority taxing/penalty debt that was the result of Fast Trac toll violations. Debtor alleges that the claim is entitled to priority, because as a government fine or debt it is excluded from discharge. Debtor states that the filing of a proof of claim determines the nature of the debt, i.e. priority or unsecured claim.

Based on the foregoing, the hearing on the Objection is continued to August 26, 2014 to be heard concurrently with the Motion to Incur Debt.

AUGUST 26, 2014 HEARING

The Debtor not incurring debt for the purchase of a vehicle, but his father incurring hte debt and making the monthly payments, there is no monthly car payment which needs to be added to the plan. Based on the foregoing, the Objection is overruled and the plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 May 30, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. 14-24041-E-7 RHS-1 **CHARLES/JOVEN RUSSELL**
C. Anthony Hughes

ORDER TO SHOW CAUSE RE: MONETARY AND NON-MONETARY CORRECTIVE SANCTIONS
7-11-14 [59]

CONVERTED TO CHAPTER 7 ON 5/16/14

Final Ruling: Pursuant to the Order Discharging Order to Show Cause, Dckt. 72, the hearing on **this matter is removed from the Calendar**. No appearance required at the August 26, 2014 hearing.

19. 14-21142-E-13 LBG-3 **THOMAS LISLE AND BARBARA TREAT**
Luke Garcia

CONTINUED MOTION FOR COMPENSATION FOR LUCAS GARCIA, DEBTORS' ATTORNEY
6-20-14 [57]

CONT. FROM 7-22-14

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 20, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

PRIOR HEARING

The court continued the hearing to allow the Applicant the opportunity to provide to the court, U.S. Trustee and other parties in interest requesting the information with the necessary task billing analysis.

FEES REQUESTED

Law Offices of Steven Johnson, the Attorney ("Applicant") for Thomas Lisle and Barbara Treat, Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. 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 sseparates the activities into the different tasks.

The court continued the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

SUPPLEMENTAL DECLARATION

On August 8, 2014, Applicant filed a supplemental declaration providing the following:

1. New Client Meeting: a. Attorney Hours = 1.0 ($225.00), b. Legal Assistant Hours = 0.3($115.00), c. Clerical Hours = 0.00 ($65.00), d. Expenses = $0.00, and e. **Total $259.50**;

2. Data Acquisition and Input: a. Attorney Hours = 5.6($225.00), b. Legal Assistant Hours = 9.3($115.00), c. Clerical Hours = 0.00 ($65.00), d. Expenses = $356.00, and e. **Total $2,685.50**;

3. §341 Meeting of Creditors: a. Attorney Hours = 3.0($225.00), b. Legal Assistant Hours = 0.00($115.00), c. Clerical Hours = 0.6 ($65.00), d. Expenses = $0.00, and e. **Total $714.00;**

4. Motion to Value: a. Attorney Hours = 0.5($225.00), b. Legal Assistant Hours = 1.3($115.00), c. Clerical Hours = 0.00 ($65.00), d. Expenses = $5.66, and e. **Total $267.66**;

5. Motion to Confirm Plan a. Attorney Hours = .5($225.00), b. Legal Assistant Hours = 1.7($115.00), c. Clerical Hours = 0.00 ($65.00), d. Expenses = $12.74, and e. **Total $320.74**;

6. Motion For Attorney's Fees: a. Attorney Hours = .5 ($225.00), b. Legal Assistant Hours = .9 ($115.00), c. Clerical Hours = 0.00 ($65.00), d. Expenses = $12.74, and e. **Total $228.74**.

After exercising reasonable billing judgment, the number of hours expended in this case for which applicant seeks compensation is 10.9 Attorney hours, 13.8 Paralegal hours and 0.6 Legal Staff hours. The applicant's customary hourly rate for services is $225.00 for attorney time, $115.00 for case manager/paralegal time and $65.00 for legal staff time. Expenses for filing fee, credit check fee and mailings total $387.14. Accordingly, applicant respectfully requests that the
amount of $4,476.64 ordered as payable by the trustee in accordance with the plan.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including confirming the Chapter 13 Plan. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $4,089.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $387.14 for filing fee, credit check fee and mailings.

The Costs in the amount of $387.14 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the Chapter 13 Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$4,089.50
Costs and Expenses	$ 387.14

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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 Law Offices of Steven Johnson (“Applicant”), Attorney for the Chapter 13 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 Law Offices of Steven Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Steven Johnson, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 4,089.50
> Expenses in the amount of $ 387.14,
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

20. 08-36047-E-13 JOHN/CHARLENE JOHNSON **MOTION TO APPROVE LOAN MODIFICATION**
PGM-6 Peter Macaluso **7-23-14 [141]**

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, parties requesting special notice, and Office of the United States Trustee on July 23, 2014. By the court's calculation, 34 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 denied.

The Motion to Approve Loan Modification filed by John and Charlene Johnson ("Debtor") seeks court approval for Debtor to incur post-petition credit. The Modification that is the subject of the motion is with another person named "Lender." On the face of the Motion the court cannot identify who this "Lender" is, or if "Lender" actually exists.

The Motion continues to that the agreement with the person named "Lender" provides,

A. The first modified payment will be in the amount of $2,345.19, at 5.000%, will be due on June 1, 2014. Debtor is to make 480 payments. [On its face, the Motion does not state the amount fo

any payments other than the first payment, and that the first payment is "at 5.00%."

B. The Modified Principal Balance will be $387,285.19. {Movant does not state the prior principal balance.]

C. There are Unpaid Amounts being added to the Principal Balance. [Movant does not say what amount of "Unpaid Amounts" are being added to the Principal Balance.]

Motion, Dckt. 141.

Though not referenced in the Motion, an exhibit has been filed in conjunction with the Motion. This Exhibit is a Home Affordable Modification Agreement. Exhibit A, Dckt. 144. This Loan Modification Agreement is not with the person named "Lender" in the Motion, but is between Nationstar Mortgage, LLC and the Debtors. Buried in paragraph 3 of their declaration, the Debtors state that they have been offered a "loan modification by our lender, Nationstar Mortgage, LLC, under HAMP."

The court is troubled when parties file generic motions which fail to state with particularity the grounds and relief sought (Fed. R. Bankr. P. 9013) and use made-up placeholder names for parties. If the court were to grant the Motion, it would grant the motion for Debtors to enter into a loan modification with a person named "Lender" and no other person. It appears that the Debtors are not seeking to modify a loan with a person named "Lender" but another entity.

The court is also troubled by a motion which hides the terms of the modification. It may well be that the principal balance is being increased from $101,000 to $387,285.19, which the Debtors agreeing to pay a $250,000 document fee, $10,000 processing fee, and $16,285.19 for miscelleous expenses. If challenged later, the person named "Lender" would blunt any consumer challenges to the propriety of such changes, arguing that the bankruptcy court approve them. This court does not blindly sign order approving secret, unstated, no pleaded terms. FN.1

FN.1. To the extent that Debtors want to argue that it's really simple and all the court has to do is read all of the pleadings to figure out what is being done, the response is – if it is that simple, then the Debtors could have simply stated such grounds and relief with particularity in the 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 Approve the Loan Modification filed by John and Charlene Johnson 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.

21. 14-25751-E-13 JODI ZACHARY
DPC-2 C. Anthony Hughes

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-23-14 [24]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

Local Rule 9014-1(f)(1) Objection - Response Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 23, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions 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 Objection to Debtor's Claim of Exemptions is sustained.

The Chapter 13 Trustee objects to Debtors exemptions on the basis that it is not clear whether the Debtor is electing to take exemptions in California Code of Civil Procedure § 703.140(B) or other exemptions.

Debtor responded, admitting that she cannot claim exemptions under both § 703 and § 704 and that she has to choose one set. Debtor states she filed an Amended Schedule B and C that only claims one set of exemptions.

A review of the docket shows that Debtor filed an amended Schedule C on August 14, 2014. Dckt. 27. The court sustains the objection as to the original Schedule C.

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 Debtor's Claim of Exemptions 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 Objection is sustained and the exemptions stated in Original Schedule C, Dckt. 5 at 8-10, are disallowed. This is without prejudice to the Debtor filing an amended Schedule C.

22. 10-50165-E-13 DONALD/LUCILE STEWART — MOTION TO MODIFY PLAN
RHM-5 Robert Hale McConnell — 7-9-14 [94]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 48 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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the proposed modified plan, on the following grounds:

1. The Trustee is uncertain of the proposed plan payment. The debtors specify in Section 1.01 a payment of $341.00. The debtors in the

additional provisions state a monthly plan payment of $1,420.00 commencing on April 2014 with delinquent amounts of $11,019.00 under the previous plan being waived. The debtors have paid a total of $45,781.00 through March 2014. The Trustee has received monthly payments of $1,420.00 for the period of April 2014 through July 2014. It appears that the debtors are intending for the plan payment to be $45,781.00 total paid in through March 2014, with the remaining 20 payments to be $1,420.00 monthly.

2. The proposed plan, Dckt. No. 89, is not signed by the joint debtor Luicile Paguio Stewart. The Trustee is not certain that the Debtor can afford the payments, unless the Debtor's spouse is in agreement with the plan.

3. Trustee notes that the Debtors filed Dckt. No. 97 amended schedules of Income and Expense. These schedules increased the debtors' income by $1,210.18 and increased the debtors' expenses by $1,209.61. The debtors did not provide any supporting documentation for the changes, and the Trustee notes major increases of $500.00 to food and housekeeping supplies, $400.00 to transportation, and $448.00 to entertainment since the petition date.

Where one of the Debtors has a new job, the Trustee expects that the food and transportation expense would increase, and that no recreation expense was present in the earlier Schedule J. The Trustee is not certain if the court will the increases reasonable without more of an explanation from the Debtor.

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.

23. 14-26567-E-13 SAMUEL TAPIA
DPC-1 John G. Downing

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-14 [23]

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 the Debtor and Debtor's Attorney on July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor appeared at the First Meeting of Creditors held on July 24, 2014, but Debtor's Counsel failed to appear. The Trustee did not conduct the examination of the Debtor. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to August 21, 2014, at 10:30 am. The Trustee's Report of the continued First Meeting of Creditors states that both Debtor and

Counsel appeared, with the Meeting being concluded. Trustee's Report, August 21, 2014 Docket Entry.

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

3. The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

4. Debtor proposes to value the secured claim of Specialized Loan Servicing on a second deed of trust on Debtor's residence, but has not filed a Motion to Value the Secured Claim to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Samuel Tapia, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

24. 10-22769-E-13 GLENN LEW AND ROSA RIVERA MOTION TO MODIFY PLAN
SAC-3 Mikalah R. Liviakis 7-8-14 [145]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 49 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 July 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

25. 14-23669-E-13 DAVID/JESSICA CERVANTES MOTION TO CONFIRM PLAN
DPR-2 David P. Ritzinger 7-11-14 [38]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 46 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 July 11, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 14-26573-E-13 PA LEE
DPC-1 Marc A. Caraska

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-14 [15]

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 July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor's plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total $5,750.00 according to Schedules B and C, and Debtor proposes to pay 0% to unsecured claim holders. Debtor's Schedule B (Dckt. No. 1, pages 10-12) lists personal property totaling $5,750.00. Debtor does not claim any exemptions in the personal property.

2. Debtor's Statement of Financial Affairs, Dckt. No. 1, pages 28-35, is not properly filled out. Each question is marked as "none." FN.1.

FN.1. On its face, the Statement of Financial Affairs admits under penalty of perjury that Debtor had no income in 2014, 2013, and 2012. This causes the court to question the truthfulness of the Chapter 13 Statement of Current Monthly Income (Form 22C) which purports to state under penalty of perjury that in 2014 Debtor has been averaging $2,933.42 in monthly income. This puts in doubt all of the information in the Schedules and Statement of Financial Affairs by the Debtor under penalty of perjury.

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3. While the plan proposes to pay the attorney $500 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtors, Dckt. No. 1., appears to list in item 6 that the attorney services do not include some services required under Local Bankruptcy Rule 2016-1(c), such as dischargeability actions, judicial lien avoidances, and relief from stay actions. The Trustee believes that the Attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

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.

27. 12-41175-E-13 MALAI KHAMVONGSA
MMN-2 Michael M. Noble

CONTINUED MOTION TO MODIFY PLAN
6-13-14 [43]

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

CONTINUANCE

The hearing on this matter was continued from July 29, 2014 to this hearing date. Civil Minutes, Dckt. No. 62. This Motion was continued to allow the Debtor to supplement the Motion and clarify plan payments on or before August 12, 2014.

REVIEW OF THE MOTION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. On June 13, 2014, Debtor filed a proposed First Modified Plan. Dckt. 47. The Motion, consisting of two unnumbered paragraphs consuming approximately one-

half of one page of pleadings, states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief requested:

A. The mortgage arrearage has come in $7,000.00 higher than anticipated.

B. Debtor's income is a little lower "than before she lost her job."

C. Debtor's expenses are also a little lower.

D. Debtor has a small amount of severance (in an unstated amount) and unemployment (in an unstated amount) to carry her through the next year until she can find comparable work.

E. Debtor then directs the court to read Exhibits I and J, and the Debtor's declaration to determine what information therein are the "grounds" which the court will state in the Motion for Debtor.

F. Debtor is increasing (in an unstated amount) her plan payments to provide for higher (in an unstated amount) than anticipated amount of (unidentified by creditor or type) claims.

G. Text, which appears to be a notice to creditors of some items (academically) which the court considers whether to confirm a modified plan. (The Motion does not clearly allege the various elements of 11 U.S.C. §§ 1322, 1325(a), and 1329.)

Motion, Dckt. 43.

Debtor states under penalty of perjury,

A. "My income is a little lower [in an unstated amount] as I lost my job."

B. Debtor is on unemployment (in an unstated amount).

C. Debtor has about $9,000.00 of severance (which total amount is unstated).

D. Debtor's expenses are lower.

E. Debtor directs the court to read Exhibits I and J (but does not authenticate them under penalty of perjury, which exhibits are not signed under penalty of perjury).

F. The Debtor's sources of income are (1) unemployment, (2) small business income of $100, (3) family support (unstated amount), and (4) severance pay.

G. Debtor states that her "net income" is $3,380.00 a month, with expenses of only $1,525.00 a month (with mortgage payment included in the Plan).

H. Debtor provides her personal conclusions of law and findings of fact, determining that her Modified Plan should be confirmed.

Declaration, Dckt. 45.

CHAPTER 13 TRUSTEE OPPOSITION

The Chapter 13 Trustee opposes the Motion on the following grounds:

Severance Pay

The Trustee is uncertain whether the proposed plan payment is Debtor's best effort under 11 U.S.C. § 1325(b). Debtor's Motion and Declaration, Dckt. Nos. 43 and 45, indicate that Debtor lost her job at an unspecified pay, but received severance pay of some amount. Debtor's Declaration states that she has $9,000.00 left of her severance and that she paid off her loans on her retirement accounts out of these funds.

Debtor does not provide information regarding her severance, such as: what the original amount of severance received; when it was received; nature of her severance; whether it was pre-paid wages or calculated on years of service; the total payment of loans on retirement accounts, and how else has the money been used. Debtor's Schedule I filed at the onset of the case, Dckt. No. 19, indicates how Debtors was employed for 1- years as a specialist for the Bank of America.

Mortgage Arrears

Debtor's modified plan proposed a monthly dividend of "" for mortgage arrears in Class 1. The additional provisions of the confirmed plan provides for payments of $236.00 per month beginning in Month 15, through monthly 43, then $310.00 for months 44 or 60. Trustee reflects that the arrears are based on the confirmation plan and are already owed $522.42 in monthly payments based on the monthly payments called for by the plan, and the additional provisions of Debtor's proposed plan do not address what monthly payments on the arrears to be paid prior to Month 15.

RESPONSE TO OBJECTION (Dckt. 59)

Debtor states that she will add the following language in the order confirming the plan to address the Trustee’s concern about how much is being paid toward the mortgage arrears:

> The plan will pay attorney fees at $100.00 a month for 7 months, 236 a month for 7 months. The plan will also pay $236 a month for arrearages for 4 months, $396 a month for 25 months, and $464 for 17 months.

Debtor states that she also addresses the Trustee’s questions about her severance pay in her declaration filed with the reply. She states that she is making her best effort by stating current with her plan payments despite being laid off.

Supplemental Declaration in Support of Motion to Modify Plan (Dckt. 60)

To rehabilitate her prior deficiencies, Debtor provides a Supplemental Declaration. Dckt. 60. In it, she states,

> I thought I had about $9,000 to carry me through the next year until I can find work. The savings is the result of receiving a regular pay check after being laid off in December 2013 until May 2014 as severance, receiving unemployment in January 2014, and my retirement plan which I had to cash out leaving me with an extra tax bill. My severance was based on my years in service and I lived off my paycheck until May of this year, and now live off the unemployment. I also paid off my car loan of $4,000 and oral surgery for my son of about $4,000. After paying off my loans on my retirement, I received a check of about $13,000 cashing out my retirement. I will have to pay tax on this. When all of this was said and done, I ended up with around $9,000 in the bank and about $4,000 in cash that I hid away for an emergency. So I was mistaken in saying I only had $9,000 as it is more accurate to say I have around $13,000 with the money I hid away.

Declaration in Support of the Motion to Modify Plan, Dckt. No. 60.

The Debtor acknowledges that she has been spending her severance payments and has not contributed her severance play towards her plan payments. Debtor states that she has paid off her car loan and for surgery for her son with a portion of her severance payments, after she was laid off recently. Debtor also admits to "hid[ing] away" money for emergencies in the bank.

In substance, Debtor admits to having violated the Bankruptcy Code using the protection provided a debtor under the Bankruptcy Code. Clearly, the Debtor has chosen to dictate to Congress, the Chapter 13 Trustee, and Creditors her bankruptcy terms – drafting her *sui generis* bankruptcy laws. She takes the money she wants, pays the creditors she wants, hides the assets she wants, and maintains the lifestyle she wants – unencumbered by the laws as enacted by Congress and signed by the President of the United States.

In proposing a new modified plan, however, Debtor has not filed revised schedules reflecting her up-to-date income and expenses. Instead, she continues to hide that information from the court and creditors.

Debtor has not included her severance payments in Line #1 of her Schedule I, stating her gross wages, salary, and commissions. In *United States v. Quality Stores*, Inc., the Supreme Court recently held that severance payments constituted "wages" for which employer was required to withhold FICA tax. *United States v. Quality Stores, Inc.*, 134 S. Ct. 1395, 188 L. Ed. 2d 413 (2014). Debtor offers no explanation as to why her schedules have not been amended, and why her severance payments have not been contributed towards her payments in her Chapter 13 Plan.

In her Original Declaration, she makes references to "we filed this case" and "plan proposes to pay as much as we can afford," "our creditors," and "we have always paid our debts." Dckt. 45; Declaration, pg. 2:16-21. While the court initially thought that this may have been a simple typographical error (counsel possibly just failing to correct the pronouns in a form), it may be

that there is a spouse, former spouse, or cohabitating partner for the Debtor and her two sons.

Review of Exhibits I and J

Though not stated under penalty of perjury, not authenticated, and not incorporated into Debtor's Declaration, the court has reviewed Exhibits I and J. For income, the Debtor states that she has $100.00 from a business, $1,000.00 support from (unidentified family), and $1,733.33 in unemployment compensation. Dckt. 46, pg. 4. In addition, Debtor lists $547.00 in "severance pay." She states that she has $3,380.33 gross income each month.

The monthly expenses for the Debtor and her two sons is stated to be $1,525.33 a month. To reach this number Debtor purports to have expenses including the following: (1) $50.00 for home maintenance; (2) $75 for electricity, heat, and natural gas; (3) $204.00 for telephone, cell phone, internet, cable; (4) $400 food and housekeeping supplies (for Debtor, 19 year old son, and 11 year old son); (5) $150.00 clothing; (6) $0.00 personal care; (7) $0.00 medical and dental; (8) $250.00 transportation; and (9) $0.00 health insurance; (10) $0.00 for taxes. The Debtor offers no testimony how she and her two sons exist on $75.00 for utilities, $0.00 for health care; $400.00 for food, and $250.00 for transportation.

The court does not find these unauthenticated, not under penalty of perjury expenses to be credible. Rather, they appear to be a fabrication to create the illusion of a plan. Additionally, the Debtor having hidden assets and operated under her private "bankruptcy laws," keeping whatever assets she wants and paying the creditors she favors, does not enhance her credibility.

There is not a bonus given a debtor (or creditor for that matter) for lying, hiding assets, and sneaking payments to creditors. Debtor does not have the ability to fund a plan. Debtor does not provide for submitting her assets and providing for creditors in good faith or as required under the Bankruptcy Code. She has chosen to give only selective, misleading information to the court and creditors. Only when forced by the Chapter 13 Trustee, does Debtor let a little more information trickle out, but continuing to hide how much she had taken in the past, what she really has now, and when she will have in the future.

AMENDED REPLY TO OBJECTION TO MOTION TO MODIFY PLAN

Debtor amends her reply to the Trustee's Objection. Debtor states that she will add the following language to the confirmation order to address the Trustee's concern about how much she is paying toward the mortgage arrears:

> The plan will pay attorney fees at $100.00 a month for 7 months, 236 a month for 7 months. The plan will also pay $236.00 a month for arrearages for 4 months, $396 a month for 25 months, and $464 for 17 months.

Debtor also addresses the Trustee's questions about her severance pay in her declaration filed with this reply. Debtor assures that she is making her best effort by staying current with her plan payments, despite being laid off, and the modified plan properly provides for each class of claims in

accordance with section 1322. She states in her original declaration filed with the motion, and pursuant to section 1325, that she is compliant with all laws, paid all fees, filed in good faith, property provided for in unsecured claims pursuant to the liquidation test, properly provided for secured claims, filed all tax returns, and has no domestic support obligations. The plan was modified to provide for increased claims pursuant to 11 U.S.C. § 1329(a)(1).

TRUSTEE'S RESPONSE TO DEBTOR'S AMENDED REPLY

1.) Severance Pay

Debtor states in her Amended Declaration, Dckt. No. 64, that:

> The savings is the result of receiving a regular pay check after being laid off in December 2013 until May 2014 as severance, and my retirement plan which I had to cash out, leaving me with an extra tax bill. My severance was based on my years of service, and I lived off my paycheck until May of this year, and now live off the unemployment. The severance pay I received was my monthly checks stated above in the approximate monthly amounts of $2,126 every week two weeks compared to the monthly about [sic] of $2,165.00 on my original schedule I. I spent this severance pay to make my plan payments and necessary living payments.

Debtor states that her mother lives with them and contributes to the household expenses, as shown in the family support of $1,000.00 on Schedule I, lines 4-6. Debtor also states that she paid off her car loan in the amount of $3,985.00 by giving cash to her sister who in turn paid off the loan which was in her sister's name, Line 10-11, and files as Exhibit K, Dckt. No. 65, a copy of the car loan statement showing the final payment. Debtor states:

> I was mistaken on the payoff year, but the final payment was due this year. I paid the car since I had the money from unemployment, and my 401(k) and did not know when I would find work again. I hid away some money so that no one would steal the money and I would not spend it. I did not hide this money from the court and I keep it for emergencies. The only reason I have this money to hide away is because I could live off my severance pay and pay unexpected bills with my unemployment and 401(k). I need the 401(k) money as it is the only retirement savings I have other than my pension of $10,000 which I can access when I retire.

Debtor states that she paid for her son's oral surgery of about $2,316.00 and files as Exhibit L a statement of payments to the oral surgeon. Debtor also indicates that she had to pay $1,244.60 to her optometrist for new glasses and contacts and files as Exhibit M a Receipt for her optometrist.

Amended Declaration is Inconsistent

Trustee points out that Debtor's Amended Declaration is inconsistent with her earlier testimony. In the Debtor's previous Declaration, Dckt. No. 60, Debtor states that her son's oral surgery was $2,316.00 and attaches as an Exhibit in support of this expense, a statement from Elk Grove Dental Group for

what appears to be orthodontia expenses over a period of time from December 9, 2008 to July 7, 2014. According to this statement, it appears that the only expense that Debtor has incurred during the life of her Chapter 13 Plan is a payment made on March 7, 2014, for $100.00, and another on May 30, 2014 for $850.00, for a total of $950.00, and not the $2,316.00 as claimed.

Amount of Retirement Funds Still Remains in Question

Debtor states in her Amended Declaration that:

> After paying off my loans on my retirement which totaled just over $8,600.00, received two checks of about $15,658.00 and $5,802.00, respectively for cashing out my retirement. I deposited the 401K funds in my bank account. I will have to pay taxes on the 401(k) withdrawal as well. When all of this was said and done, I ended up with around $7,000 in the bank and about $4,000 in cash that I hid away for an emergency. So I was mistaken and confused as I mentioned above in saying I only had $9,000 as it is more accurate to say I have around $11,000 with the money I hid away.

Debtor's Schedule B filed December 9, 2012, reflects that at time, the Debtor had a 401k in the value of $12,000.00, and a loan against it of approximately $1,500.00. The Debtor had a pension with a value of $10,000 and a loan against it of approximately $6,000.00. Debtor's Schedule I reflects a monthly deduction from Debtor's paycheck of $212.81 from the 401K loan, $129.05 for the pension loan, and a monthly contribution to her 401K of $351.61 (page 20). Debtor's Schedule I indicates that the 401K loan was to be paid off in 6 months, and the pension in 2016. This would mean Debtor's 401K loan should have been paid off in approximately June of 2013.

Debtor's loans against her 401K and pension actually increased from $7,500.00, as claimed in December 2012, to $8,600 when monthly payments to the loans were scheduled, and the 401K was paid off over a year ago.

Additionally, Debtor now claims that it is more accurate to state that she has around $11,000 with the money she "hid away," when in her prior Declaration, Dckt. No. 60, she stated that the more accurate amount was $13,000.00. The Trustee calculates that if the Debtor received two checks of about $15,658.00 and $5,802.00, or $21,460.00 total, less $8,600 in the retirement loans, Debtor would have $12,860.00.

2.) Mortgage Arrears Monthly Dividend

Debtor's Reply proposes to add the following language to the order confirming to address the Trustee's objection regarding the mortgage arrears monthly dividend:

> The plan will pay attorney fees at $100.00 a month for 7 months, 236 a month for 7 months. The plan will also pay $236.00 a month for arrearages for 4 months, $396 a month for 25 months, and $464 for 17 months.

Under the confirmed plan, Dckt. No. 5, Debtor provided in the additional provisions that attorney's fees would be paid in months 1 through

14 at $100.00 for the first 7 months, then $236.00 for months 8 through 14. Class one arrears payments would begin in month 15 at $236.00 per month through month 43, then $310.00 per month for months 44 through 60.

The language Debtor now proposes to add to the order confirming appears to commence payments for mortgage arrears in the amount of $236.00 in month 1 (January 2013 where Debtor's petition was filed December 9, 2012), instead of month 15 pursuant to the confirmed plan. The proposed payments would require the Trustee to dedicate all future payments–other than Trustee fees and presumably ongoing mortgage payments–to the arrears for some time as only $1,198.07 has been paid to date and 19 months have elapsed.

RULING

The Debtor's testimony continues to be riddled with inaccuracies regarding the reporting of Debtor's income and severance pay, expenses, retirement funds, and the amount being paid towards Debtor's monthly mortgage arrears dividend. Even when making statements under the penalty of perjury, the Debtor makes inconsistent statements about her severance income, her contributions to family members and their various loans and medical necessities, and borrowing from her 401K.

Debtor's amended declaration claims different expenses for Debtor's son's oral surgery, optometric expenses, and provides unauthenticated evidence in the form of indeterminable expense statements for orthodontia care, rather than the $4,000 originally claimed. Dckt. No. 60. The evidence provided conflicts with Debtor's previous testimony stating now that her son's oral surgery was $2,315.00 during the life of her Chapter 13 Plan. Debtor's retirement fund loans remain unclear. Debtor's loans appear to have increased, according to Debtor's most recent claims, when calculations show that the Debtor's 401K should have been paid off by June of 2013, given her monthly deductions from her paycheck, and a monthly contribution to her plan.

Additionally, the language that Debtor now proposes to add in the order confirming appears to commence payments for the arrears on the first month, rather than the 15th month pursuant to Debtor's confirmed plan. The proposed payments would require the Trustee to dedicate future payments to the arrears for some time, as only $1,198.07 has been paid to date and 19 months have already elapsed.

The Debtor continues to acknowledge that she spending her severance payments on a car loan for her sister, surgery for her son, and has been tucking away for emergencies and has not contributed any of these funds towards payments for her plan. Hiding assets from the court and her creditors risks Debtor's ability to obtain a discharge, violates the spirit and purpose of the Bankruptcy Code, and is causing creditors and other parties of interest to be defrauded by the Debtor, who apparently believes that she can act with impunity and maintain a lifestyle, free of the restrictions of all bankruptcy laws enacted by Congress and enforced by all bankruptcy courts, including this court.

In being less than forthcoming about her assets and ability to fund her plan, Debtor has not met her burden of proof in advancing plan confirmation in good faith, and under the requirements of 11 U.S.C. § 1325. This plan does not represent Debtor's best effort under 11 U.S.C. § 1325(b). FN.1.

FN.1. To say that the Debtor's conduct, attempts to hide assets, and attempts to justify the misconduct demonstrate a clear, intentional, pattern of conduct to subvert the Bankruptcy Code. Saying that this demonstrates a contempt for the Bankruptcy Code and flagrant, intentional violation of the minimum duties and obligations of a Chapter 13 debtor is almost an understatement. The Debtor's bad faith permeates this entire case.

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.

28. 10-35278-E-13 BSJ-4 — RODNEY/SHEILA BORGESON — Brandon Scott Johnston — MOTION TO SUBSTITUTE DECEASED PARTY — 7-25-14 [62]

CASE CLOSED 10/4/13

Tentative Ruling: The Motion to Substitute Deceased Party 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 the Chapter 13 Trustee, parties requesting

special notice, and Office of the United States Trustee on July 25, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Substitute Deceased Party 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 Deceased Party is denied without prejudice.

Debtors, Sheila Anne Borgeson (the deceased party, as represented herein by Rodney Borgeson) and Rodney Borgeson, move the court for an order approving the motion to Substitute Debtor spouse Rodney James Borgeson for Deceased Debtor, Sheila Anne Bogeson.

The Debtors have filed the Suggestion of Death pursuant to Federal Rule of Civil Procedure 25(a). Dckt. No. 60. Debtor Sheila Anne Borgeson passed away on November 19, 2012, and a Certificate of Death was issued on December 3, 2012. The Debtor spouse, Rodney James Borgeson, represents that he is fully capable to maintain the required plan payments without the assistance of his deceased spouse, as his pension income has historically been their sole income.

Movant states that although there was a life insurance policy, it was a term policy for burial and related expenses and no cash value to list on their original Schedule B and C. Out of the total of $50,000.00 insurance proceeds, the following payments were made:

- Lind Brothers Funeral Home and Crematory located at 4221 Manzanita Avenue, Carmichael, CA 95608 was paid approximately $9,000.00 for mortuary services and merchandise expenses;

- Calvary Catholic Cemetery located at 7101 Verner Avenue, Sacramento, CA 956841, paid $22,000.00 for a Crypt;

- Sutter Hospital in Roseville CA was paid $1,500.00 for hospital bills;

- Debtor Rodney Borgeson states that he spent approximately $1,500.00 on food and other expenses for people who visited the deceased at the mortuary, and after the burial services and who visited the home and offered their condolences.

The Motion states that further administration of this Chapter 13 case is possible and in the best interest of the parties. Federal Rule of Bankruptcy Procedure 1016 provides that the death of a Chapter 13 debtor does not automatically end the case, but that 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. The Court has discretion

to permit a chapter 13 case to continue after the death of a co-debtor and retains exclusive jurisdiction over properly of the estate. *In re Querner*, 7 F.3d 1199 (5th Cir. 1993).

TRUSTEE'S OPPOSITION

The Trustee opposes Debtors' Motion on the basis that, in the Interim Order Reopening the Case filed on July 29, 2014, Dckt. No. 66, Debtor Rodney James Borgeson received $50,000 in life insurance proceeds upon the death of co-debtor Sheila Anne Borgeson. The Debtor has indicated that $36,000 was spent on funeral and medical expenses. The Trustee requests bank statements or invoices to confirm the $36,000 spent on these expenses, and an explanation regarding the remaining $16,000 unaccounted for. Dckt. No. 77.

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.

Here, the Motion to Substitute the Deceased Party was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. No 62. The Motion is being filed by Rodney Borgeson, the deceased Debtor's spouse, after the Debtor (Rodney Borgeson–in his capacity representing himself as well as his deceased spouse) has properly filed a Suggestion of Death Upon the Record. Dckt. No. 60.

As the Trustee points out, however, that it appears that while the Debtors were in their bankruptcy case, Debtor Rodney James Borgeson took $50,000 of insurance proceeds received by the estate, and spent that money on a funeral. This included $36,000 spent on funeral and medical expenses, leaving $16,000 unaccounted for by Rodney Borgeson. The court indicated in its hearing on the Motion to Reopen the Debtor's Chapter 13 case on August 5, 2014, that it was still unsure whether the Debtor has determined that the reopening

of this case is proper and (2) whether the Trustee must be reappointed to investigate the $50,000.00 in insurance proceeds. Civil Minutes, Dckt. No. 71.

At the August 5, 2014 hearing on the Motion to Reopen the Case, the Debtor and Chapter 13 Trustee agreed to continue the hearing on the matter to afford the parties an opportunity to consider the proper resolution of the motion. In its ruling, the court noted that the bankruptcy case has been closed for nine months, and all of the debts subject to the discharge predated the Debtor's filing of the case on June 10, 2010.

The Debtor not having produced bank statements or invoices to confirm the $36,000 spent on funeral and medical expenses, and $16,000 in insurance policy proceeds still being unaccounted for, the court denies the Motion to Substitute Deceased Party. It is still unclear whether reopening the case to allow Debtor Rodney James Borgeson is proper, and the status of the $50,000 in insurance proceed funds allegedly received and spent by Debtor Rodney Borgeson. FN.1.

FN.1. The court notes that the lost of a spouse is a traumatic event. However, it is not an excuse for debtors to use $50,000.00 for a funeral rather than reasonably using the monies for the funeral and paying the balance to the estate. Here, Debtor's conduct demonstrates a "spend as much as we can since creditors will get it anyway" attitude, which is inconsistent with the good faith prosecution of a bankruptcy case.

It is clear that the surviving Debtor is not a person who can fulfill the fiduciary duties of the late co-Debtor with respect to the estate. 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 Substitute Deceased Party 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 Substitute Deceased Party is denied.

29. 14-26479-E-13 DPC-1 — FELIX/PATRICIA VASQUEZ — Frank X. Ruggier — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 7-30-14 [14]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers

opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan for two reasons. First, the Debtors are $1,085.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,085.00 is due on August 25, 2014.

The case was filed on June 20, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $0.00 into the plan to date.

Second, Debtors' Schedule I, Dckt. No. 1, pages 25-26, fails to include an attachment detailing gross business income and expenses as required by Line 8A of the form. $1,805.34 is listed in monthly net income. The Statement of Financial Affairs disclosed $32,000.00 in gross income for 2014 (5 months, $6,400 per month), $74,733 for 2013 ($6,227 per month), and $80,385 for 2012 ($6,698 per month) from the business and employment. *Id.* at 30. Schedule I lists $3,944.92 in wage income. Based on the 2014 income information, this would leave $2,456.00 as the gross business income.

No business is listed on Schedule B. No business assets are listed on Schedule B. The Statement of Financial Affairs a business as " Playground Safety Inspection."

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.

30. 14-25585-E-13 SCOTT OLNEY
MRG-1 Lucas B. Garcia

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SYSTEMS AND SERVICES TECHNOLOGIES, INC. 6-18-14 [13]

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 June 18, 2014. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Systems & Services Technologies, Inc. ("SSTI"), objects to the confirmation of the Debtor's Chapter 13 Plan. On June 11, 2014, SSTI filed Proof of Claim No. 1 in the amount of $9,722.41, including arrearage in the amount of $9,722.41.

Creditor states that its claim is secured by the personal property commonly described as: 2005 BIG MO BULLDOG, vehicle identification number ending in the last four digits of #0033 (the "Property"). Pursuant to 11 U.S.C. § 1325(a)(5)(B), Creditor states that the value of the property to be distributed is less than the allowed amount of Creditor's claim.

Debtor has provided for Creditor's claim under Class 2 in the plan, but the claim has not been reduced based on value of collateral. Creditor states that the Debtor lists the amount claimed by SSTI as $7,533.92, but that the actual amount of the claim is $9,722.41.

Creditor argues that the plan fails to provide sufficient payments to Secured Creditor for adequate protection. 11 U.S.C. §1325(a)(5)(B). Debtor has provided an interest rate of only 4.00% on Secured Creditor's claim in the Plan. However, the original interest rate on Secured Creditor's claim is 10.99%. In *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Supreme Court adopted a two part "prime-plus" formula to determine the property interest rate to be paid on the secured claim, in compliance with the "cram down" provisions of the Bankruptcy Code. The current prime rate is 3.25%. As such, Creditor argues that the Debtor should look to the 3.25% and adjust that rate accordingly in order for Secured Creditor to receive a rate incorporating the Debtor's risk of default.

To the extent that Debtor's Plan seeks to pay Secured Creditor a fixed, market rate of interest, the court should also factor the Debtor's risk of default and the nature of the security when assessing a cramdown interest rate. The Property at issue is a depreciating asset, and the risk of default is high due to the Debtor's economic circumstance and the instant bankruptcy. Creditor asserts that the court should find that Creditor must be paid no less than 6.25% (3.25% + 3% for risk adjustments) interest per annum on its secured claim on a fully amortizing loan.

RESPONSE BY DEBTOR

The Debtor responds by stating that Creditor's contention that it has a claim is the amount of $9,722.41 is incorrect, and the true amount of the claim is $7,533.92. Response, Dckt. 29. Debtor so responds based on a transaction history with a faxed transmission date of May 20, 2014.

The Account Transaction History document consists of six pages, the first page containing the most current information states the following:

A. Contract Date.....April 20, 2005

B. Original Balance.....$29,712.89

C. Interest Rate.....10.99%

D. Original Term.....96 [presumably months]

E. Monthly Payment.....$ 466.58

F. Current Balance.....$7,533.92 [after 3/6/14]

G. Next Due Date.....08/25/2012

H. Transactions After 08/25/2012

1. 11/07/2012 Mult Pmts w/Charge

a. Principal.....($1,181.97)
b. Interest.....($ 217.77)
c. Other .....($ 10.00)

2. 04/12/2013 Investigation Expe.....$ 75.00

3. 03/06/2014 Investigation Expe.....$550.00

Exhibit [unnumbered], Dckt. 30.

However, this Exhibit is not authenticated, but merely filed in connection with Debtor's Counsel's arguments in response to the opposition. Fed. R. Evid. 901, 801, 802, 601, 602, 603. Given that preparing a declaration properly authenticating such an exhibit is so simple, the absence of such declaration causes the court to give the argument and Exhibit little weight.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b).

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

In considering the *prima facie* evidentiary value of Proof of Claim No. 1, the court notes that no account summary or transaction statement is included. Rather, the only "evidence" of the $9,722.41 amount is that those numbers are filled in on a line on the proof of claim form.

Proof of Claim No. 1 identifies Systems & Services, Technologies, Inc. as the creditor for the claim. See 11 U.S.C. § 101(10) and (5) for statutory definition of creditor. However, Systems & Services, Technologies, Inc. is not a party to the contract attached to Proof of Claim No. 1, is not identified as an assignee of the contract, is not listed as the secured creditor on the title certificate attached to Proof of Claim No. 1 (GE Capital Consumer Card is identified as the lien holder). Additionally, a "Limited Power of Attorney, Execution Copy" is attached to Proof of Claim No. 1 states the following:

A. GE Captial Retail Bank is the "Seller."

B. SunTrust Bank is the "Buyer."

C. Systems and Services Technologies, Inc. is the agent for Suntrust Bank.

D. GE Captial Retail Bank gives a limited power of attorney to SunTrust Bank and Systems and Services Technologies, Inc. to:

1. Ask, demand, sue for, endorse, recover, receive and collect the "Purchased Assets."

2. To endorse and negotiate promissory notes.

3. To modify, amend, continue, assign, or terminate any UCC financing statements.

4. To endorse and negotiate for benefit of SunTrust Bank any instrument or document relating to the Purchased Assets.

5. The Limited Power of Attorney is solely for the purpose of carrying into effect the transfers contemplated in the Sale Agreement.

From Proof of Claim No. 1 the prima facie evidence shows that Systems and Services Technologies, Inc. is not the creditor, but SunTrust Bank is the creditor.

Proof of Claim No. 1 is not signed by an employee of either SunTrust Bank or its agent, Systems & Services Technologies, Inc., but by LynAlise K. Tannery, with the law firm Buckley Madole, P.C., identified as the agent of Systems & Services Technologies, Inc.

As shown just on the August 5, 2014, the court has identified deficiencies in the proofs of claims and pleadings filed by the Buckley Madole, P.C. law firm, specifically relating to incorrectly identifying (or hiding to preclude a debtor from obtaining effective service of process on) the creditor. On the August 5, 2014 calendar these items include, Items 4 and 6, 14-23416-E-13 Mario and Christine Borrego; and Item 35, 14-25561-E-13 Marcelo and Hazel Lopez.

Though the Debtor could not authenticate its Exhibit, Systems & Services Technologies, Inc. and its agent, Buckey Madole, P.C. have demonstrated through Proof of Claim No. 1 that Systems & Services Technologies, Inc. is not a creditor in this case. Proof of Claim No. 1 is not entitled to prima facie evidentiary value to allow Systems & Services Technologies, Inc. to derail confirmation of the Chapter 13 Plan in this case.

DISCUSSION

The account statements filed as evidence in support of the Opposition by Debtor indicating that the current balance on the claim is $7,533.92. The statements detail different transaction dates, codes, and the amount applied in principal, interest, and late fees in charges and payments made toward the claim. Dckt. No. 30. On the basis of the fax purportedly sent recently to the Debtor, the amount of the claim appears to be Debtor’s cited figure of $7,533.92.

Additionally, SSTI argues that this interest rate of 4.00% being paid on its claim through the Debtor’s proposed Chapter 13 plan is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Additionally, as Debtor has stated in its response to the Objection, the true creditor (once truthfully and accurate disclosed) may repossess the subject vehicle if Debtor defaults on his plan payments, and fails to make the necessary payments on the secured claim. The stay may be modified to allow the actual creditor to seize and sell the vehicle to satisfy the Creditor's claim. Because SSTI has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a .75% risk adjustment, for a 4.00% interest rate.

CONTINUANCE

The court continued the hearing from the original hearing held on August 5, 2014, to this hearing date. At the previous hearing, on August 5, 2014, the Debtor and counsel for SSTI represented to the court that they believe a settlement of this Objection can be achieved between the Debtor and the actual creditor. Civil Minutes, Dckt. No. 37.

However, nothing further has been filed on the matter, either representing that the parties have reached a settlement regarding the issues raised in the Objection, or that SSTI is the true creditor in this case. The parties not having filed a settlement agreement, and Systems & Services Technologies, Inc. not having submitted further, competent evidence to the court showing that it is the actual creditor in interest for the claim pursuant to the requirements of 11 U.S.C. §§ 101(1) and (5), the objection to confirmation of the Plan is overruled and the proposed 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 Systems & Services, Technologies, Inc. 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 July 11, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

31. 10-26187-E-13 STEPHEN/GLENDA TAMPA
PGM-3

MOTION TO MODIFY PLAN
7-17-14 [51]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 17, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order

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

32. 14-26094-E-13 SHEILA GARCIA
DPC-1 Marc A. Caraska
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on July 24, 2014. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to August 21, 2014 to 10:30 a.m. The Trustee reports that the Debtor failed to attend the August 21, 2014 continued First Meeting of Creditors. Trustee's Report, August 21, 2014 Docket Entry.

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

3. Debtor has failed to provide the Trustee with Business Documents, including a questionnaire, two years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance, or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). A business questionnaire and request for documents was mailed to the Debtor on June 25, 2014.

4. Debtor is $1,927.57 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,927.57 is due on August 25, 2014. The case was filed on June 9, 2014, and and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid $0.00 into the plan to date.

5. On or about July 14, 2014, the court issued an order to show cause set for hearing on September 10, 2014 (Dckt. No. 19). Debtor has not paid the filing fee installment of $77.00 due on July 9, 2014 pursuant to the Order Approving Payment of Filing Fees in Installments, Dckt. No. 7.

6. Debtor afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of HSBC on a second deed of trust on Debtor's residence, but has not filed a Motion to Value Secured Claim to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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.

33. 14-26094-E-13 SHEILA GARCIA
PD-1 Marc A. Caraska
OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A.
7-30-14 [25]

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 July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc. ("Creditor"), objects to confirmation of the proposed Chapter 13 Plan.

Creditor states that it executed a promissory note with Sheila Ann Garcia dated October 5, 2005, in the original principal sum of $496,000.00. The Note is endorsed and payable in blank. The Note is secured by a Deed of Trust (the "Deed of Trust") encumbering the real property commonly known as 2530 Ramona Court, West Sacramento, CA 95691 (the "Subject Property").

On June 23, 2014, the Debtor filed her Chapter 13 Plan (the "Plan") providing for monthly payments to the Trustee in the total amount of $1,927.57, for 60 months. Of the sum paid to the Chapter 13 Trustee, Creditor will be paid $231.76 per month for 60 months on its pre-petition arrears, which are listed in the amount of $11,588.00. Creditor is in the process of finalizing its proof of claim for this matter and estimates that its pre-petition arrearage claim is in the approximate amount of $302,976.83, representing: pre-petition payments totaling $231,821.99; $63,758.39 in tax advances; $3,272.00 in insurance advances; $2,307.75 in escrow shortage; and $1,816.70 in fees and costs. The current ongoing post- petition payment is $3,501.51.

On June 23, 2014, the Debtor filed Schedules I and J reflecting disposable income in the amount of $1,930.00 per month. However, Creditor states that the Debtor will be required to apply $5,049.61 per month to the Chapter 13 Plan in order to cure Creditor's pre-petition arrears.

Creditor argues that the Debtor's Plan cannot be confirmed as proposed because it fails to properly provide for the cure Creditor's pre-petition arrears. Creditor claims that their pre-petition arrears total $302,976.83. However, the Debtor's Chapter 13 Plan provides for the cure of only $11,588.00. As the Debtor's Plan fails to provide for a cure of Creditor's pre-petition arrears, it fails to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii) and cannot be confirmed as proposed.

11 U.S.C. § 1325(a)(6) also requires debtors to be able to make all plan payments and to comply with the terms set forth in the plan. Creditor asserts that the Debtor has not provided sufficient evidence that her Chapter 13 Plan is feasible. Debtor's Schedule J indicates that the Debtor has disposable income of $1,030.00 per month. However, the Debtor will be required to apply an additional $5,049.61 per month to the Chapter 13 Plan in order to provide for a prompt cure of the pre-petition arrears owed to Creditor in sixty months as required by 11 U.S.C. section 1322(b)(5).

Additionally, Debtor's plan provides for post-petition arrears in the amount of $1,500.00 per moth. Debtor's ongoing post-petition payment for this loan is currently $3,501.51. Creditor argues that the Debtor's Plan does not have a reasonable likelihood of success and cannot be confirmed as proposed.

REVIEW OF PROOF OF CLAIM

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b).

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v.*

Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

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

U.S. Bank Trust, N.A., as "as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., as its attorney in fact," has filed Proof of Claim No. 1 in this case. The name and address of where notices should be sent is listed as Caliber Home Loans, Inc., at "13801 Wireless Way, Oklahoma City, OK 73134," and the mortgage that is listed as the basis for perfection of the claim appears to be an Interest Only Adjustable Rate Note entered between the Lender, Encore Credit Corp., and Debtor Sheila Garcia. This instrument is attached as supporting documentation to Proof of Claim No. 1 on the claims registry in this case.

There is an "Allonge to Note" executed by Sheila Garcia, in which U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, is listed as the entity to which Debtor's payments must be sent. A second Allonge to Note is signed and executed by Sheila Garcia and U.S. Bank Trust, N.A., as Trustee

for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., as Its Attorney in Fact. Proof of Claim No. 1, pages 15-16.

The Deed of Trust attached lists the Lender as the Encore Credit Corp., a California Corporation and Debtor, and the property described as 2530 Ramona Court, West Sacramento, California. No exhibits on the docket, however, show that the objecting creditor, U.S. Bank Trust, N.A. is the actual owner of the underlying obligation. No assignment or transfer of claim appears on the docket or the Proof of Claim transferring any interest to U.S. Bank Trust, N.A. The Creditor has not filed a Power of Attorney showing that U.S. Bank Trust, N.A., is authorized to act on behalf of the actual creditor and assume the standing of the creditor in interest in this case.

U.S. Bank Trust, N.A., however, has identified itself as the Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., "as its attorney in fact." Although U.S. Bank has not made not made the best possible showing that it is an assignee of the contract, or the actual owner of the Interest Only Adjustable Rate Note executed by Debtor and the Lender in 2005, U.S. Bank Trust, N.A. has expressed that it is a trustee, acting on behalf of the LSF8 Mater Participation Trust, by Caliber Home Loans, Inc.

The Interest Only Adjustable Rate Note attached to Proof of Claim No. 1, contains only the written signature of Debtor Sheila Garcia. Proof of Claim No. 1, Claims Registry. The note appears to be endorsed in blank by the originator–-that is, no payee is named or designated on the Note. California Commercial Code Section 3205(b) provides that an instrument indorsed in blank becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed. The original note becomes a "bearer instrument" by operation of law, and no assignment of the instrument is necessary to prove possession.

Because it has been endorsed in blank, the subject Note is the bearer paper, a negotiable instrument which is payable to whoever has possession (the bearer) of the instrument. Accordingly, since U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., as its attorney in fact, has filed a proof of claim in its capacity as a trustee in this case and attaches the actual Note to its proof of claim, the court may infer that U.S. Bank Trust, N.A., is in possession of the subject note. California Commercial Code § 3205(b). This presents a colorable claim and basis for objecting to confirmation.

Additionally, the Mortgage Proof of Claim Attachment accompanying Proof of Claim No. 1 shows that U.S. Bank Trust, N.A., represents itself as acting as the Trustee for LSF8 Master Participation Trust, and has filed a secured claim on behalf of Caliber Home Loans. Thus, U.S. Bank Trust, in its capacity as Trustee, may file an objection to the confirmation of the Chapter 13 Plan as a party of interest in Debtor's case.

The Attachment to the Proof of Claim, which details the principal and interest due on the petition date, as well as pre-petition fees, expenses, and charges owed by the Creditor, shows that the total amount of arrearage on the secured claim is $302,978.83. The Debtor's Chapter 13 Plan only provides for the curing of the default in the amount of $11,588.00. Thus, Debtor's proposed Plan does not provide for the cure of creditor's pre-petition arrears, thereby

failing to satisfy the requirements of confirmation under 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.