UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 9, 2014 at 2:00 p.m.

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1. 12-30902-C-13 KEVIN REYNOLDS — MOTION TO MODIFY PLAN
SDB-4 W. Scott de Bie — 7-29-14 [47]

Final Ruling: No appearance at the September 9, 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 29, 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 29, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. 14-21304-C-13 CHARLIE/LAURA BALANGUE
PGM-2 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
6-19-14 [40]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. Thirty-five days' notice is required. That requirement was met.

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.

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtors' plan does not reflect their best efforts under 11 U.S.C. § 1325(b).

Debtors' Schedule B discloses three (3) additional adults, ages 81, 26, and 22 living in the household. Debtors report no income deriving from these three adult and did not provide Trustee with evidence of income for these family members.

On June 19, 2014, Debtors filed an Amended Schedule I and increased

their combined net disposable income of $6,005.39 to $7,107.39 by adding income employment for Debtor Charlie Balangue.

On Schedule J, Debtor's increased their expenses from $2,805.39 to $5,407.39. Debtors explain the changes by stating that they first omitted a garbage expense of $96, underestimated their food expenses by $200, underestimated their electricity expenses by $100, and that their driving costs have increased by $1,000 due to their adult son. Debtors did not provide copies of recent utility bills, grocery receipts, or bank statements to support the significant changes in expenses, particularly in transportation.

Debtors' Response

Debtors requested additional time to supplement the record will the requested documents. In particular, Debtors requested a 30-day continuance.

The court granted Debtors' request to continue the hearing on the Motion to Confirm the Plan to this hearing date. Specifically, the court is anticipating Debtors to provide more thorough declaration(s) discussing why no income is reported from the three adults living with Debtors and explaining the increases in expenses highlighted by the Trustee. The Court expects the declaration(s) to be supported with exhibits directly corroborating the increased expenses.

SUPPLEMENTAL REPLY OF DEBTORS

Debtors respond by stating that they emailed the mother-in-law's income, daughter's 2013 tax return, son's pay stubs, utility statements, and household receipts on August 4, 5, and 22nd to ccrom@cusick13.com. "Due to the high volume," the Debtors have not filed these documents with the court. Dckt. No. 66.

TRUSTEE'S SUPPLEMENTAL OPPOSITION TO PLAN FILED ON JULY 22, 2014

On July 22, 2014, the Trustee filed opposition to Debtors' proposed motion to confirm and amended plan filed on June 19, 2014, indicating that the plan does not appear to be the Debtors' best efforts. Debtors' filed Schedule I, showing an increase in income and decreased their mortgage payment in the proposed amended plan, then filed amended Schedule J, which basically consumed all additional income by increasing expenses. Debtors have increased their income. The Trustee was also concerned that the Debtors listed 3 additional adults living in the home, without reporting any income for these family members. At the hearing on the Motion to Confirm, the court continued the matter to September 9, 2014, giving the Debtors time to respond to the Trustee's opposition and to file supplemental documents in response to Trustee's Opposition.

Supplemental Response and Documents

On August 4, 2014, the Trustee received email documents, showing income for debtors' mother being $747.40 per month from Social Security. On August 4, 2014, and August 22, 2014, the Trustee received by email paystubs for Debtors' son, who is earning an average of $1,390.86 per month in gross wages, and $1,133.64 per month net wages from employment at Gramercy Court. Exhibit A.

On August 4, 2014, the Trustee received by email a 2013 Tax Return for debtors' daughter, which showed that she had earnings of $12,100.00 in 2013, which would average approximately $1,008.34 per month. The tax return also revealed that her address at the time of filing her tax returns shows that she lived in San Diego, California, and that she received an $882.00 federal tax refund. Debtors also provided, by email from their counsel, the Trustee with some bills, grocery receipts, and restaurant receipts for the months of June 2014 through early August 2014.

A breakdown of the bills is shown below:

Sacramento County Utilities: bill due date on August 18, 2014; $203 in current services and $1,493.05 in past due services. Total due, $1757.99.

City of Elk Grove Utilities: bill due date June 16, 2014; $71.88 in current services, and $210.75 in past due services. Total due, $282.63.

Comcast: due date June 26, 2014; $183.29 in current services (cable and internet), and past due services of $171.29. Total due, $345.58.

Miscellaneous Receipts: $772.86 in grocery, eateries, Target, and Walmart.

In total, Debtors have supplied evidence of only 3 household bills and minimum grocery receipts, and nothing to support the astronomical transportation expense they have claimed. All bills and recepts are provided as Exhibit B in support of this Motion.

Supplemental Objection

The Trustee supplements his opposition to object to the good faith filing of the Debtors' plan, with the following arguments:

Good Faith

The Trustee is uncertain whether Debtors' plan has been proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtors are over median income, and pray that this court give them extraordinary relief. Debtors' plan calls for the "Ensminger Provisions" proposing to pay nothing toward mortgage arrearage, and paying only an adequate protection payment of $1,225.00 per month. Debtors do not provide clear and consistent explanations and evidence regarding their dependent's status, and their income and expenses.

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren,* 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor’s surplus;

2) The debtor’s employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

Based on the conflicting information provided, the Trustee believes that Factors #1 and #4 are implicated.

Inconsistencies

On February 24, 2014, Debtors filed a Motion to Extend Deadline to File Schedules, Dckt. No. 12, which was prepared and filed by counsel, Peter Macaluso. On March 3, 2014, Peter Macaluso substituted in as counsel for the Debtors, and also filed the balance of Debtors' schedules, Dckt. No. 20. On Form 22 C, Debtors are shown to be over median income, and list their household size as 3.

On March 3, 2014, the Debtors filed an amended voluntary petition. On the amended petition, the Debtors list only their middle initials, rather than listing their full middle names. Debtor Charlie M. Balangue does not report any other known names. Dckt. No. 19.

On Schedule J, Debtors reported having 2 dependents; a 26 year old son described as a student, and a 22 year old daughter described as a student. On Schedule J, the household size appears to be reported as 4. Debtors' report no income from either dependent at the time of the filing. Dckt. No. 20. Income on Schedule I, Dckt. No. 20, was reported from the wages of Laura Balangue from employment at MTI Business School, and IHSS income for Charlie Balangue. On June 19, 2014, the Debtors filed their First Amended Plan, Dckt. No. 44, and the motion to confirm. In support of the proposed plan, Debtors filed Amended Schedules I and J, Dckt. No. 46.

On Schedule I, Debtors add income from the employment of Charlie Balangue of $1,102.00 per month, in addition to the IHSS income previously reported for Mr. Balangue. Net income on Amended Schedule I is not $7,107.39. On the amended Schedule J, Debtors add another dependent, adding Mother who is 81 years old. Amended Schedule J now appears to claim that the household size is 5. There has been no explanation as to why a third "dependent" was added, whether she recently moved into the Debtors' home, and where she lived, previously and for how long.

In the supplemental declaration filed on August 25, 2014, the Declarant lists his name as Charlie Balangue, Sr., a name which did not previously appear in the case. Debtor states that his son pays $300.00 per month toward rent and utilities. This is inconsistent with the Schedule I's filed in this case. Debtors have not reported any income from their son. It appears that based on this declaration, the Debtors have an additional $300.00 per month to contribute toward the plan. In the supplemental declaration, Debtor also indicates that his mother in law receives $747.40 per month, but that the whole amount of her income goes to the sole support of herself, paying for her own food, personal care products, therapeutic items, and her medications.

Based on this information, it does not appear that the mother-in-law is a dependent of the Debtors', and should not be claimed as such. In the supplemental declaration, the Debtor indicates that they had been covering their daughter's gas and maintenance expenses, but are no longer helping her. Debtors do not indicate why the support stopped, when, or how long they provided the support. Debtors did not disclose where their daughter lives, or when the last time was that she lived in their home. Considering the transportation expense was increased on June 19, 2014, the Trustee is concerned with the information provided, that shows that the Debtors' daughter is not a dependent, and not a part of the transportation expense calculation.

In the supplemental declaration, the Debtor indicates that their current transportation expense is an average of $900 per month, including $275.00 for wife, $150 for debtor, and additionally the three cars the debtors own--including the son's car, cost an average of $150.00 and $150 per month for maintenance and sporadic breakdowns. Where Debtors amended their transportation expense on June 19, 2014, to $1,600 per month, the Debtors have not supported the deduction. They have not supported any of the transportation expenses with any documentation and in their own declaration, admit that the actual costs are only $825.00, which is approximately half the amount that they reported on their schedules.

It appears that, based on this testimony, that the Debtors have an additional $775.00 to contribute toward the plan. In addition, the Debtors expect the court and creditors to allow Debtors to support their adult son's transportation expenses, when it appears that he sufficient income of his own to support his expenses. Debtors' paystubs for their son showing net income averages of approximately $1,133.00 per month (with their son only paying $300.00 for rent and utilities), leave him with $833.00 per month for his other needs and expenses, including transportation.

Debtors' expenses, in summary, on their Schedule J are unsupported by the evidence provided, and may have been created to conceal excess disposable income on Schedule J, after changing the plan payment to $1700 per month from $3200. All sums required by the plan have not been paid

under 11 U.S.C. § 1325(a)(2). The Debtors are $1,700 delinquent in plan payments to the Trustee to date, and their next scheduled payment of $1,700 is due on September 25, 2014. Debtors have paid $8,500.00 into the plan to date.

Based on the foregoing, the amended Plan still does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on June 19, 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.

3. 14-23406-C-13 MARK/ANDREA DRIVER — MOTION TO CONFIRM PLAN
SJD-2 Susan J. Dodds — 7-21-14 [49]

Final Ruling: No appearance at the September 9, 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 21, 2014. By the court's calculation, 51 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 24, 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.

4. 13-25008-C-13 TERENCE CAMPOLIETI
14-2008
CAMPOLIETI, SR. V. PNC MORTGAGE, INC. ET AL
Thru #5

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-1-14 [41]

CONTINUED TO THIS HEARING DATE @ 2:00 (TO BE HEARD IN CONJUNCTION WITH MOTION TO DISMISS)

Plaintiff: Terence Campolieti

Defendant: PNC Mortgage, Inc., individually and as agent for PNC Bank, N.A.; PNC Bank, N.A., as successor in interest to National City Bank, Inc., and National City Mortgage.

Plaintiff filed his first amended complaint on July 1, 2014.

Breach of contract and the implied covenant of good faith and fair dealing, declaratory judgment, injunctive relief, specific performance.

Debtor-plaintiff owns real property at 6401 Rabbit Hollow Way, Elk Grove CA 95757. There is a first deed of trust held by National City Bank and National City Mortgage (plaintiff believes that now only the bank holds the first). A second deed of trust is held by Operating Engineers Federal Credit Union.

Plaintiff's chapter 13 plan was confirmed June 22, 2013. Plaintiff sought a loan modification and submitted the paperwork 8 times. The bank finally offered debtor a temporary loan modification. The debtor fulfilled the terms of the temporary loan and filed for a final loan modification. The debtor amended his plan, which was confirmed on December 10, 2013, to reclassify the mortgage from Class 1 to Class 4.

The modified plan specified that the plaintiff would file a motion for approval of the loan modification after the modification was signed by both the debtor and the bank. The plaintiff submitted the signed loan modification but the bank denied the modification because the court had not approved it and indicated a new application must be submitted.

Plaintiff seeks a determination that the loan modification is valid, enforceable and binding, and seeks treble, compensatory, and consequential damages, costs & interest, preliminarily and permanently enjoin defendants from fraudulent acts, general damages of $500,000, special damages of $500,000, and exemplary damages of $500,000.

5. 13-25008-C-13 TERENCE CAMPOLIETI
14-2008 AAB-2
CAMPOLIETI, SR. V. PNC MORTGAGE, INC. ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
8-7-14 [52]

Tentative Ruling: The Motion to Dismiss Adversary Proceeding 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 and Debtor's Attorney on August 7, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding 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 Dismiss Adversary Proceeding is denied.

The Motion to Dismiss Adversary Proceeding states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Defendant PNC BANK, N.A., dba PNC Mortgage (which claims that it has erroneously sued herein as PNC Mortgage, Inc.), individually and as agent for PNC Bank, N.A.; PNC BANK, N.A ("Defendant", or "PNC") moves this court for an order dismissing Debtor Terence Campolieti ("Debtor")'s First Amended Adversary Complaint.

B. This Motion is made pursuant to Federal Rules of Civil Procedure Rule 12(b)(6).

C. The Motion asserts that Debtor has failed to state a claim for relief against PNC on multiple grounds.

D. Defendant prays that PNC's motion to dismiss be granted with prejudice.

E. Defendant requests that it be awarded costs of this suit and other such relief as this Court deems to be just and proper.

The Motion to Dismiss Adversary Proceeding does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Defendant, PNC BANK, N.A., dba PNC Mortgage, individually and as agent for PNC Bank, N.A.; PNC BANK, N.A, "Defendant," moves this court for an order dismissing Debtor Terence Campolieti ("Debtor" or "Plaintiff")'s First Amended Adversary Complaint. This is not sufficient.

The Defendant seeks an order dismissing Debtor's First Amended Adversary Complaint, but fails to include any factual contentions that serve as the basis for its Motion. Defendant makes no allegations supporting its argument that the Plaintiff's Adversary Complaint cannot survive a motion to dismiss brought under Federal Rules of Civil Procedure Rule 12(b)(6). Defendant makes no assertions on the face of its Motion relating to the claim that the Debtor has "failed to state a claim against PNC on multiple grounds." Dckt. No. 52.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal

proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and

other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

PLAINTIFF'S RESPONSE

Plaintiff responds by stating that none of Defendants' various arguments are supported by pleadings or by law, for dismissal of Plaintiff's First Amended Complaint ("FAC"). Plaintiff asserts that the primary attack against each of Plaintiff's causes of action is based upon a fundamental misreading of the FAC. Defendants consistently argue that the FAC's failure to allege that Defendants signed the contract at issue means that no contract formation has been properly plead. However, as Plaintiff plead in his FAC, the obligation for Defendants to sign the contract was not a condition precedent to the contract but was in fact an obligation of performance after contract formation.

A. THE COURT HAS ALREADY RULED UPON AND ASSERTED JURISDICTION IN THIS MATTER

As a preliminary matter, Defendants request that this Court refrain from exercising jurisdiction. However, this matter has been previously argued and disposed of. This appears to simply be an impermissible second bite at the apple by Defendants. Plaintiff claims that Defendants have already asserted this argument and lost. *See* Defendants' Memoranudm of Points and Authorities in support of their Motion to Dismiss dated March 11, 2014, Docket Entry 10 p: 3:19-4:17. The parties fully briefed the matter. The Court ruled that it would indeed take jurisdiction.

> "the Plaintiff has appropriately stated in his responsive pleadings that this court retains jurisdiction over this proceeding, the result of which would have a critical effect on the estate being administered in bankruptcy."

See Order of April 29, 2014, Docket Entry 28, p:6, par 5. Defendants did not appeal the Order and therefore the Court's assertion of jurisdiction stands. Plaintiff not only argued (and prevailed upon) his position on assertion of jurisdiction, but he also plead it in his FAC. FAC 1:26-2:18.

B. THE ADVERSARY COMPLAINT ASSERTS THE EXISTENCE OF A VALID CONTRACT AND DEFENDANTS' BREACH OF THE AGREEMENT IN VARIOUS WAYS; INCLUDING REFUSAL TO ACCEPT AGREED UPON MORTGAGE PAYMENTS OR ACKNOWLEDGING THE EXISTENCE OF A VALID LOAN MODIFICATION

All of the allegations by Defendants that Plaintiff has failed to plead the existence of a contract are based upon a fundamental misreading of the FAC. That Defendants failed or refused to sign the contract does not affect the contract formation.

1. THE PARTIES ENTERED INTO A VALID CONTRACT. DEFENDANTS' FAILURE TO SIGN WAS NOT A CONDITION PRECEDENT BUT WAS INSTEAD AN ELEMENT OF PERFORMANCE.

Defendants assert that they are not parties to any contract because

the FAC, on its face, asserts that Defendants never signed it. This is quite true. However, the FAC does not rely upon Defendants' signatures in its allegation that the parties entered into a valid contract.

Hornbook contract law dictates the standards for formation of a contract: offer, acceptance, consideration. The offeror dictates the terms of the offer and the manner of its acceptance. In this case, Plaintiff asserts that Defendants offered a loan modification in September 2013 and conditioned Plaintiff's acceptance on the following terms:

> 1) sign 3 copies of the agreement in front of a notary; 2) indicate that Plaintiff resides on the property; 3) return 2 copies of the loan modification agreement by September 25, 2013. Defendant provided an overnight, pre-paid envelope for Plaintiff to mail the forms back in; 4) retain one copy for Plaintiff's records; 5) make an initial payment in the amount of $1,443.27. FAC. p 4:5-11

These were the only conditions with which Plaintiff had to comply in order to create a binding contract. In the FAC, Plaintiff further alleges his acceptance of the offer by virtue of his performance of each of these conditions offered by Defendants. See FAC. p 4:12-19. At no point does the contract provide, nor does Plaintiff allege, that Defendants' signature on that contract is a condition precedent to the formation of a contract. Instead, it appears that Defendants are attempting to imply one. Civil Code section 1436 provides: "A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed."

Where, as here, there is no express condition precedent, the existence of an implied condition precedent is a matter for a trier of fact in applying a reasonable person standard. Guntert v. City of Stockton (1974) 43 Cal.App.3d 203, 209,[117 Cal.Rptr. 601].

Again, however, Plaintiff did not plead the existence of a condition precedent to contract nor did the contract which accompanies the FAC, and is incorporated therein, provide for Defendants' signature as a condition precedent. Defendants cite no provision of the contract which provides this. Accordingly, Defendants' refusal or failure to sign is not fatal to either the contract or the FAC.

> *2. ALTHOUGH NOT ARGUED BY DEFENDANT, PLAINTIFF PLEAD, AND DISPOSED OF, ANY ASSERTION THAT THE STATUTE OF FRAUDS INVALIDATES THIS CONTRACT*

Plaintiff argues that the Statute of Frauds does not bar Plaintiff's claims in part because 1) Defendant has sufficiently "subscribed" on the agreement by virtue of sending letters in which it offers the above-referenced contract; 2) Plaintiff's detrimental reliance; 3) other admissible evidence (the Loan Modification Agreement, letters between the parties, Declarations and testimony of Plaintiff and his material witnesses, etc.) that sufficiently proves that a contract exists between the parties; 4) Plaintiff's substantial, or complete, performance of his contract obligations and Defendants' acknowledgment and acquiescence thereto (by virtue of accepting and cashing mortgage payments under the agreement) and 5) the equitable doctrine of promissory estoppel. See California Civil Code § 1624 et seq and Restatement 2nd of Contracts.

Tven if Defendants attempt to rely upon the Statute of Frauds to allege the non-existence of a contract (by virtue of their not signing it), the Plaintiff asserts that this argument is invalid and is properly disposed of by the FAC.

3. PLAINTIFF HAS PLEAD CONTRACT DAMAGES AND, EVEN IF INARTFULLY DONE, DAMAGES MAY BE PRESUMED AS A MATTER OF LAW.

Defendants allege that even if a contract exists between the parties, that Plaintiff has not alleged damages resulting from a breach thereof. Plaintiff states that this is not the case because Plaintiff has been paying the modified loan amount since it was approved by Defendants in June 2013. This amount is less than the previous mortgage amount. Thus, by virtue of Defendants' refusal to acknowledge the validity of the lower payment amount as valid payment on Plaintiff's mortgage, Plaintiff faces statutory, non-judicial foreclosure. This allegation has been properly plead in Plaintiff's complaint. FAC, p 7:24-26. Defendant's possible right to foreclosure is available now by California law so long as they continue to assert that no valid contract exists and that Plaintiff, therefore, is not complying with the prior contractual (original mortgage loan) terms. It should further be noted that Plaintiff's previously confirmed Chapter 13 Plan provides for this debt as a Class 4 debt.

Accordingly, Plaintiff is no longer protected by the Automatic Stay. Additionally, the confirmed Plan itself is in jeopardy insofar as it deems Plaintiff in default of the Plan terms. Thus, the refusal or failure to acknowledge this contract could be the deathknell of this Bankruptcy, thus resulting in foreclosure and money damages (including attorney fees).

California Civil Code section 3300 provides: “For the breach of an obligation arising from contract, the measure of damages ... is the amount which will compensate party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.” (emphasis added)

Damages may be foreseeable in nature and not necessarily discernable at the time of initial pleading. The Restatement Second of Contracts, section 351, provides:

> (2) Loss may be foreseeble as a probable result of a breach because it follows from the breach (a) in the ordinary course of events, or (b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know.

California case authority supports the legal basis for the assertion that damages flow from those which are foreseeable, and are a question of fact for the jury.

> "The detriment that is ‘likely to result therefrom’ is that which is foreseeable to the breaching party at the time the contract is entered into.” Wallis v. Farmers Group, Inc. (1990) 220 Cal.App.3d 718, 737. (Internal citation omitted).

> “When reference is made to the terms of the contract alone, there is ordinarily little difficulty in determining what damages arise from its breach in the usual course of things,

> and the parties will be presumed to have contemplated such damages..." Mitchell v. Clarke (1886) 71 Cal. 163, 164-165, (Internal citation omitted.) 'The rules of law governing the recovery of damages for breach of contract are very flexible. Their application in the in a number of situations that arise is beyond question variable and uncertain. Even more than in the case of other rules of law, they must be regarded merely as guides to the court, leaving much to the individual feeling of the court created by the special circumstances of the particular case.' " Brandon & ibbs (1990) 226 Cal.App.3d, 442. 455. (Internal citation omitted.)

In his complaint, Plaintiff alleges a right to contractual damages based upon breach of the contract. Both logic and the law dictate that the damages that naturally flow from that breach are those which will be asserted by Plaintiff. Damages for a breach of this nature are obvious -- risk of foreclosure, restitution for Defendants' wrongful refusal to acknowledge the contract (and continued acceptance of mortgage payments in the amount of the lowered, contractual amount), remedies for Defendants' purported rescission of the contract or its offer, damages related to the failure of the Chapter 13 Plan, and attorney's fees (possibly others, which Plaintiff reserves the right to assert at a later date).

Plaintiff argues that the Defendants are not novice parties. They are banks, highly proficient in the legal realm relating to mortgage loans. Defendants and this Court can certainly ascertain what damages may necessarily flow from a breach of the type alleged by Plaintiff. Regardless, the issue of the nature of damages sought is necessarily a factual one. The facts as plead show clearly that Plaintiff has in fact been damaged by Defendants' conduct.

> *4. PLAINTIFF HAS ASSERTED THE FACTUAL BASIS FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING. THIS MATTER IS FOR THE TRIER OF FACT, NOT THIS COURT, TO DETERMINE AT THIS STAGE*

> "There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the beneWts of the agreement." Comunale v. Traders & General Ins. Co. (1958) 50 Cal.2d 654, 658. (Internal citation omitted.)

The standards for breach of the implied covenant of good faith and fair dealing are 1) contract formation; 2) the non-breaching parties performance; 3) the breaching parties frustration of the other's party's ability to perform; and 4) damages. *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 349-350.

As noted above, Plaintiff has properly plead each one of these elements. Furthermore, this issue is yet another that is not for the Court to determine at this stage of the proceedings. It is a matter for the trier of fact. *Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 509. As noted above, Plaintiff has properly plead the elements for breach of contract and has also plead the factual elements for breach of the implied covenant of good faith and fair dealing. The remaining issue of whether these allegations can proven is up to a trier of fact and cannot be disposed of at a Motion to Dismiss. Defendants' only basis for arguing against this

cause of action is based upon their assertion that no contract exists or has been plead. However, as noted above, a contract does in fact exist and has been properly plead by Plaintiff.

C. PLAINTIFF HAS PROPERLY PLEAD A REQUEST FOR A DETERMINATION OF THE LEGAL OBLIGATIONS OF THE PARTIES BY VIRTUE OF 1) THE EXISTENCE OF A VALID CONTRACT AND 2) A CURRENT DISPUTE AS TO THE EXISTENCE THEREOF

Defendants properly assert that in order for this Court to determine the rights of the parties to a contract, that an actual controversy must exist thereto. Defendants then claim that Plaintiff's FAC fails to allege an actual controversy. Their sole basis for this argument is that

> "Without establishing that there is an enforceable contract, there is no actual controversy as to whether a contract exists between the parties. Accordingly, the declaratory relief cause of action fails as a matter of law." Defendants' Motion to Dismiss, p 8:18-20. "there are no allegations PNC ever executed the agreement in question." Id. p 8:16-17. Again, these arguments are unsupported. Plaintiff has alleged the existence of a valid contract. Plaintiff has plead the fact that Defendants' signature on the October 2013 contract is not a condition precedent to its existence but is a contract term with which Defendant must comply.

It belies reason that Defendants can in one breath claim that Plaintiff asserts the existence of a contract, in another breath deny its existence, and then in yet another breath claim that there is no dispute as to whether a contract exists. The existence, or non-existence, of the contract forms the basis for the majority of the FAC.

D. PLAINTIFF CONCEDES THAT ANY CAUSE OF ACTION ALLEGING INJUNCTIVE RELIEF IS NOT VALID AND AGREES TO IT BEING STRICKEN FROM THE FAC

As properly noted by Defendants, a request for injunctive relief is a remedy and not a cause of action. Accordingly, Plaintiff concedes this finite point.

E. PLAINTIFF HAS PROPERLY PLEAD A CAUSE OF ACTION FOR SPECIFIC PERFORMANCE Again, Defendants' arguments are based on a misreading of the FAC.

Defendants claim that Plaintiff has not alleged a proper breach of a valid contract. Based upon that assertion, Defendants claim that no cause of action for specific performance exists thereon. MTD, p 8:18- 20. However, given that Plaintiff has properly plead all the elements necessary for a valid contract, this argument fails as well.

F. TO THE EXTENT THAT ANY PORTION OF THE FAC IS DEFECTIVE, PLAINTIFF SEEKS LEAVE TO AMEND

Although confident that he has plead all the necessary elements of each cause of action alleged in his FAC, if the Court finds that he has not, then Plaintiff would seek leave to amend. Accordingly, Plaintiff requests that this Motion to Dismiss be denied. Dated: August 26, 2014.

REPLY BY PNC BANK, N.A. TO OPPOSITION TO MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant PNC Mortgage, Inc. submits a Reply to Plaintiff's Opposition to the Motion to Dismiss the First Amended Complaint.

I. QUESTIONS AS TO SUBJECT MATTER JURSIDICTION CAN BE RAISED AT ANY POINT

Defendant begins its response by asserting that Plaintiff's argument that the Court has already asserted jurisdiction to hear this matter rests upon the Court's prior order regarding Plaintiff's prior complaint. (See Dkt. 28, 6:5). However, the Court's decision to exercise jurisdiction as to Plaintiff's prior complaint has no bearing on whether the Court could abstain from exercising jurisdiction over the exclusive state law issues as set forth in Plaintiff's FAC. As subject matter jurisdiction is never waived, the Court, has the discretion to decide whether to abstain from exercising jurisdiction at any point. See Gonzalez v. Thaler (2012) 132 S.Ct. 641, 648; *In re: Harlow Properties, Inc*. (9th Cir. 1985) 56 B.R. 794. Plaintiff's Opposition does not dispute the fact that he FAC alleges only state law claims, and the underlying bankruptcy is resolved at this time.

Further, it is undisputed the June 2013 Chapter 13 Plan remains in full force and effect regardless of what occurs in this litigation and if and until Debtor moves to amend the Chapter 13 Plan. Additionally, as noted in PNC's moving papers, the FAC has no bearing on Plaintiff's underlying bankruptcy, and as such, the court could abstain for hearing the adversary proceeding even if it decided it had jurisdiction as to the initial Complaint.

II. PLAINTIFF'S OPPOSITION FAILS TO ADDRESS ALL DEFICIENCIES RAISED IN PNC'S MOTION TO DISMISS

A. Plaintiff's Opposition Fails to Identify any Facts Contained in the FAC Demonstrating any Contract between PNC, Breach by PNC, or Damages Suffered

Defendant argues that Plaintiff's Opposition states that both he and PNC entered into a valid contract, and that PNC's failure to sign was not a condition precedent to the formation of the contract, i.e. the loan modification agreement. Oppo., 3:23-25 However, Plaintiff's own exhibits demonstrate that "[u]ntil the agreement is executed, [PNC] will proceed with any and all of [PNC's] rights and remedies as provided by your original loan agreement to the extent permitted by law." FAC, Exhibit B (emphasis added).

As such, the October 2013 agreement, in order to be valid and enforceable, needed to be executed. It is undisputed PNC did not sign the contract in question, the October 2013 agreement, no agreement to permanently modify the Subject Loan was ever reached, and PNC has no obligations to perform under the October 2013 agreement. Further, Plaintiff's Opposition fails to address PNC's arguments regarding Plaintiff's failure to plead any facts suggesting PNC was in breach of any contract. As noted in PNC's moving papers, Plaintiff's entire breach of contract stems from PNC's purported failure to execute the October 2013 agreement, however there is not one provision that provides PNC must execute the October 2013 agreement or be in breach of said agreement.

Defendant asserts that the Plaintiff's failure to address PNC's arguments can only be interpreted as his concession to the merits of the same, and as such, his breach of contract claim fails, as he has failed to plead each element required. Finally, with respect to Plaintiff's failure to plead damages, Plaintiff's Opposition alleges a multitude of potential damages that he may suffer, which are not alleged in Plaintiff's FAC. See FAC ¶¶ 28, 33.

Defendant argues that the Plaintiff's FAC does not indicate he is currently in foreclosure proceedings, or that he has suffered any specific damages. Indeed, Plaintiff's FAC simply alleges "As a result of the above breach. Plaintiff is entitled to general and special damages according to proof." FAC ¶ 28. Such allegations fail to allege Plaintiff has suffered any damages as a result of any purported breach, and Plaintiff's Opposition does not point to any specific allegations in his FAC to the contrary. As such, without pleading damages suffered, Plaintiff's breach of contract claim continues to fail.

B. Plaintiff's Opposition Fails to Address PNC's Arguments that His Breach of Implied Covenant of Good Faith and Fair Dealing Fails as a Matter of Law

In Plaintiff's Opposition, Plaintiff argues that he has plead all required elements for breach of the implied covenant of good faith and fair dealing, as Plaintiff has plead a contract exists between him and PNC. Defendant maintains that there is no existing contract between PNC and Plaintiff, as PNC did not sign the October 2013 agreement. Further, Plaintiff's Opposition wholly fails to address PNC's arguments that (1) no tort basis exists for this claim and (2) said tort does not apply to financial institutions.

Defendant takes Plaintiff's failure to address certain arguments to be conceding the merits of PNC's arguments with respect to this claim, and as such, should be dismissed with prejudice, as Plaintiff cannot cure this defect upon amendment.

C. Plaintiff's Opposition Fails to Identify any Facts Contained in the FAC Demonstrating an Actual Controversy Necessitating Declaratory Relief.

Plaintiff's Opposition suggests that the actual controversy between the parties is the existence of a contract (i.e. the October 2013 agreement) Oppo., 7:21-25. Plaintiff's Opposition argues that he has alleged the existence of a valid contract. PNC claims that it undisputedly did not execute the October 2013 agreement, as was required to create a binding agreement. As such, no enforceable contract exists between the parties, and Plaintiff presents no legal doctrine which would form the basis for a declaratory judgment that an enforceable contract exists. Plaintiff's Opposition fails to address this point.

D. Plaintiff's Opposition Fails to Identify any Facts Contained in the FAC Demonstrating He Has Alleged all Elements of Specific Performance.

Defendant argues that Plaintiff's Opposition conclusory argues that he has alleged all elements necessary for a valid contract, and as such, has plead all elements for specific performance. Oppo. 8:8-14.

Defendant argues that PNC did not execute the October 2013 agreement, and as such, is unenforceable against PNC. Further, even if there was a fully enforceable agreement between the parties, Plaintiff has only alleged PNC breached the purported October 2013 agreement by failing to execute it. However, the October 2013 agreement lacks any material provision that requires that PNC execute the agreement, otherwise it is in breach. Finally, Plaintiff fails to allege adequate consideration by Plaintiff necessitating specific performance by PNC. As such, Plaintiff's Opposition fails to adequately address PNC's arguments, and fails to identify any facts contained in the FAC that he has pled all elements for specific performance.

STANDARD

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 129* S.Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

DISCUSSION

Jurisdiction

On April 29, 2014, the court heard a prior Motion to Dismiss the Adversary Proceeding brought by Defendant PNC Mortgage, N.A., which was granted, but permitted the Plaintiff to file an amended complaint on or before May 29, 2014, a motion for leave to file an amended complaint, with a copy of the proposed amended complaint filed as an exhibit in support of the motion. Civil Minutes, Dckt. No. 28. The Plaintiff filed an Amended Complaint on July 1, 2014. Dckt. No. 41. In the court's ruling on Defendant's previous Motion to Dismiss, the court stated the following:

> First, the court considers the Plaintiff's contention that this court should abstain from exercising jurisdiction over the present proceeding. Federal Rule of Bankruptcy Procedure 7012(b) requires that the responsible pleading admit or deny that the allegation is a core or non-core proceeding. The basis for the court's jurisdiction over this matter is found in 28 U.S.C. § 1334, which provides, in relevant part
>
> > (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.28 U.S.C. § 1334(b)."
>
> [C]laims that arise under or in Title 11 are deemed to be 'core' proceedings, while claims that are related to Title 11 are 'noncore' proceedings." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir.1995). Claims that arise under Title 11 are those that involve a cause of action created or determined by a statutory provision of Title 11. *Id.*, citing *In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987). Claims that arise in Title 11 are " 'administrative' matters that arise solely In bankruptcy cases . . . [They] are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy." Wood, 825 F.2d at 97.
>
> Claims that are "related to" a case under title 11, are, generally speaking, those claims that are owned by the debtor at the time the petition is filed and that become part of the estate pursuant to 11U.S.C. § 541(a). They may also include proceedings that take place between third parties. See 1 Lawrence P. King, et al., Collier on Bankruptcy, § 3.01[3][c] (15th Ed. rev. 2010). The Ninth Circuit has concluded that a "related" proceeding is largely synonymous with a"non-core" proceeding. See *Benedor Corporation v. Conejo Enterprises, Inc.* (*In re Conejo Enterprises, Inc.*), 71 F.3d 1460, 1464, n.3 (9th Cir.1995). A non-core proceeding "'does not invoke a substantive right

> created by the federal bankruptcy law and is one that could exist outside of bankruptcy . . . .'" In re Harris Pine Mills, 44 F.3d at 1435(quoting Wood, 825 F.2d at 96-97). A bankruptcy court has jurisdiction over a related proceeding.
>
> Here, although Plaintiff Debtor's claims for relief all implicate questions of state contract, tort, and business law, the matter invokes the substantive right created by federal bankruptcy law, for Debtors to seek the extraordinary relief and protections of a Chapter 13 bankruptcy, through drafting and confirming a Chapter 13 reorganization plan. Although the claim of jurisdiction over this matter as a "core proceeding" is poorly pled in the actual Complaint, the Plaintiff has appropriately stated in his responsive pleadings that this court retains jurisdiction over this proceeding, the result of which would have a critical effect on the estate being administered in bankruptcy.
>
> In extending jurisdiction over this adversary case, however, the court notes that there are many issues and shortcomings that are apparent in Plaintiff's Complaint, Dckt. No. 1.

Civil Minutes, Dckt. No. 28. As indicated in the court's ruling on Defendant's first Motion to dismiss, the court ruled that retaining jurisdiction on Plaintiff's Adversary Complaint is necessary to determine, for instance, the validity of the alleged loan modification on which Debtor relied and included in his modified Chapter 13 Plan. Debtor listed the Defendant creditor as holding a claim classified as a Class 4 debt. Defendant did not file any objections to confirmation of the proposed plan.

According to the FAC, Plaintiff Debtor completed trial plan payments and accepted a loan modification offer allegedly submitted by the Bank, but did not receive the loan modification documents to finalize the parties' agreement. The Defendant's alleged failure to provide the previously agreed upon loan modification agreement (which would have enabled the Debtor to seek court approval of the modification agreement) forces Plaintiff Debtor in conflict of the loan modification provisions of his own, previously confirmed plan.

Plaintiff seeks a declaratory judgment that a permanent loan modification is in place. The court's determination of whether a valid loan modification agreement was in place, and continues to be operative, directly affects whether Debtor carried out the obligations of his Chapter 13 plan, whether the mortgage loan debt can be considered to be discharged since Debtor's completion of payments called for under the plan, and whether Defendant has cause to non-judicially foreclose on the subject property. Thus (Plaintiff correctly pints out that the as the court has already made a determination on this issue), the court has decided to exercise jurisdiction over the instant adversary proceeding.

Breach of Contract

The elements of a breach-of-contract claim in the jurisdiction in which the subject modification agreement was allegedly executed are: a valid contract binding the parties; the plaintiffs' performance under the

contract; the defendant's nonperformance; and resulting damages *Abdelhamid v. Fire Ins. Exchange*, 182 Cal. App. 4th 990, 106 Cal. Rptr. 3d 26 (3d Dist. 2010). A cause of action for breach of an implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor's conduct. *Gomez v. Lincare, Inc.*, 173 Cal. App. 4th 508, 93 Cal. Rptr. 3d 388 (4th Dist. 2009), as modified, (Apr. 28, 2009) and review denied, (July 22, 2009).

As Defendant points out, to establish a claim for breach of contract in California, a party must allege the following essential elements: (1) the existence of a contract; (2) the party's performance or excuse for nonperformance under the contract; (3) that all conditions required for defendant's performance occurred; (4) Defendant's breach; and (5) Plaintiff's damages were proximately caused by Defendant's breach. *Acoustics, Inc. v. Trepte Construction Co.* (1971) 14 Cal.App.3d 887, 913.

Here, the Plaintiff has properly stated a claim showing entitlement to relief and a demand for the relief requested; Plaintiff claims that Defendant offered him a loan modification in September, 2013, and conditioned the Plaintiff's acceptance on the following terms: 1) sign 3 copies of the agreement in front of a notary; 2) indicate that Plaintiff resides on the property; 3) return 2 copies of the loan modification agreement by September 25, 2013. Defendant provided an overnight, pre-paid envelope for Plaintiff to mail the forms back in; 4) retain one copy for Plaintiff's records; 5) make an initial payment in the amount of $1,443.27. FAC. p 4:5-11.

Plaintiff further alleges his acceptance of the offer by virtue of his performance of each of these conditions offered by Defendants. Plaintiff asserts that the Defendant's offered loan modification agreement, and Plaintiff's acceptance by virtue of the documentation submitted, and payments made during the trial loan payment period, all support Plaintiff's contention that the contract is legally enforceable. Plaintiff argues that Defendant's signature, which Plaintiff admits is not included in the October, 2013 agreement, is not a condition precedent to the formation of the loan modification contract.

Moreover, the Plaintiff argues that the Statute of Frauds does not bar the Plaintiff's claims in part because 1) Defendant has sufficiently "subscribed" on the agreement by virtue of sending letters in which it offers the above-referenced contract; 2) Plaintiff's detrimental reliance; 3) other admissible evidence (the Loan Modification Agreement, letters between the parties, Declarations and testimony of Plaintiff and his material witnesses, etc.) that sufficiently proves that a contract exists between the parties; 4) Plaintiff's substantial, or complete, performance of his contract obligations and Defendants' acknowledgment and acquiescence thereto (by virtue of accepting and cashing mortgage payments under the agreement) and 5) the equitable doctrine of promissory estoppel. *See* California Civil Code § 1624 et seq and Restatement 2nd of Contracts. The Plaintiff has made a properly short, plain statement with factual allegations sufficient to raise Plaintiff's right to relief about the speculative level.

Damages for Breach of Contract and Breach of the Covenant of Good Faith

Defendant argues that here is no existing contract that can be breached, since Defendant is not a party to the October 2013 agreement, and thus cannot have breached the "implied good faith" of said contract.

As stated in Plaintiff's Opposition, however, the Plaintiff alleges a right to contractual damages for breach of the formed loan modification agreement-- the risk of foreclosure on the subject property, restitution for Defendants' wrongful refusal to acknowledge the contract (and continued acceptance of mortgage payments in the amount of the lowered, contractual amount), remedies for Defendants' purported rescission of the contract or its offer, damages related to the failure of the Chapter 13 Plan, and attorney's fees. Plaintiff's Amended Complaint, Dckt. No. 41, provides a set of facts in support of Plaintiff's claim which entitle him to the specific damages sought.

Additionally, the Plaintiff seeks a declaratory judgment that a permanent loan modification is in place. The standards for breach of the implied covenant of good faith and fair dealing are 1) contract formation; 2) the non-breaching parties performance; 3) the breaching parties frustration of the other's party's ability to perform; and 4) damages. *Guz v. Bechtel National*, Inc. (2000) 24 Cal.4th 317, 349-350. Plaintiff has pled all of these elements in the Amended Complaint, Dckt. No. 41. Plaintiff argues that Defendants breached their duties of good faith and fair dealing by virtue of the acts complained of above, evidenced by the fact that as part of the loan modification process, the Defendant represented that upon the occurrence of various conditions precedent (Plaintiff returning an executed loan modification agreement) that it would execute the agreement and return it to Plaintiff.

Existence of Controversy

Pursuant to the Declaratory Judgment Act, the parties must present actual controversy, in order to obtain a declaratory judgment stating the rights and other legal relations of any interested party seeking the declaration. A party seeking declaratory relief must present an "actual controversy" in order to satisfy the "case or controversy" requirement of Article III. 28 U.S.C. § 2201(a). *MedImmune v. Genentech*, 549 U.S. 118 (2007). See *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 325 (1936) (upholding constitutionality of the Act under Article III). See also *Already LLC v. Nike Incorporated*, 133 S. Ct. 721, 726-27 (2013); *Columbian Financial Corporation v. BancInsure Incorporated*, 650 F.3d 1372 (10th Cir. 2011) (applying MedImmune decision); *Prasco LLC v. Medicis Pharmaceutical Corporation*, 537 F.3d 1329, 1336 (Fed. Cir. 2008) (applying M*edImmune* decision).

The purpose of the Declaratory Judgment Act is to allow parties to have their disputes adjudicated before either suffers great damage. Moore's Federal Practice, Civil § 57.03[2]. It allows the parties to act before either has the ability to seek a coercive remedy and avoid the accrual of otherwise unnecessary damages before the rights can be adjudicated. *Starter Corp. V. Converse, Inc.*, 84 F.3d 592, 597 (2nd Cir. 1996); *Kunkel v. Continental Casualty Co.*, 866 F.2d 1269, 1273-1274 (10th Cir. 1989); *Pratt v. Wilson*, 770 F. Supp. 539, 545 (E.D. Cal. 1991).

As shown from the pleadings, there is a concrete controversy that exists between the Parties. Defendant acknowledges that, without establishing that there is an enforceable contract, there is no actual

controversy as to whether a contract exists between the parties and the declaratory relief cause of action fails as a matter of law. The Defendant asserts that there is no valid, legally enforceable contract that has been formed or executed. Plaintiff alleges the existence of a valid contract, and argues that the Defendants' signature on the October 2013 contract is not a condition precedent to its existence but is a contract term with which Defendant must comply.

The Plaintiff has properly presented an actual controversy, in Plaintiff's request for declaratory judgment adjudicating the parties' rights and responsibilities with respect to the alleged loan modification agreement, for the court's consideration.

DISMISSAL OF THIRD CAUSE OF ACTION

Defendant argues that the injundctive relief claims fails with the Declaratory Relief Claim. A cause of action must exist before injunctive relief may be granted. *Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168. A preliminary injunction, in itself, is not a cause of action. *Korean American Legal Advocacy Foundation v. City of L.A*, (1994) 23 Cal. App. 4th 376, 399; *Major v. Miraverde Homeowners Assn*. (1992), 7 Cal. App. 4th 618, 623. Also, a permanent injunction is merely a remedy for a proven cause of action. *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.

Plaintiff concedes to the dismissal of the cause of action alleging injunctive relief (due to injunctive relief being a remedy, and not a cause of action), and agrees to it being stricken from the First Amended Complaint.

Taking the allegations in the subject complaint as true and are construed in the light most favorable to the plaintiff, the court determines that the First and Second Claims for Relief contained in Plaintiff's First Amended Complaint survives Defendant's Motion to Dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), as those portions of the complaint have set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). The First and Second Claims of Relief in Plaintiff's First Amended Complaint properly plead the elements of Breach of Contract and the Implied Covenant of Good Faith and Fair Dealing, in showing the Plaintiff's entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a).

Based on the foregoing, the Motion to Dismiss is denied as to the First and Second Causes of Action contained in Plaintiff's First Amended Complaint. Dckt. No. 41. The Plaintiff having agreed to remove the Third Cause of Action from the Plaintiff's First Amended Complaint, the Motion to Dismiss is granted as to Plaintiff's Third Cause of Action.

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

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

The Motion to Dismiss filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied as to the First and Second Causes of Action contained in Plaintiff's First Amended Complaint. Dckt. No. 41. The Plaintiff having agreed to remove the Third Cause of Action from the Plaintiff's First Amended Complaint, the Motion to Dismiss is granted as to Plaintiff's Third Cause of Action, and the Third Cause of Action included in the First Amended Complaint filed on July 1, 2014, is hereby stricken.

6. 13-35611-C-13 RS-2 — KENNETH HUSARIK AND KELLY ALLEN — Richard L. Sturdevant — MOTION TO CONFIRM PLAN 7-18-14 [59]

Final Ruling: No appearance at the September 9, 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 18, 2014. By the court's calculation, 58 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 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

7.	14-26412-C-13 DPC-1	BERNICE SCARBOROUGH Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on August 13, 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.

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 August 7, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343. Debtor has not presented any evidence to the court as to why she failed to appear. The Meeting

was continued to October 2, 2014, at 10:30 am.

2. It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $600.00. To date, the Trustee has not received any plan payments from the Debtor, where one payment has come due. The next scheduled payment of $600.00 is due August 25, 2014.

3. 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).

4. Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6).

   a. Schedule J lists Debtor's net income as $1,159.00.

   b. It appears Schedule I lists Debtor's Social Security and Retirement income twice. The total of her income on Lines Nos. 8e and 8h is $2,009.00, which is also listed on Lines 2 and 4.

   c. Section 2.14 is blank. The Debtor failed to list a dividend to the unsecured claim holders.

   d. Debtor lists Champion Mortgage in Class 1 of the plan. Class 1 is incomplete as it fails to list the arrearage dividend and the interest rate on arrears.

   e. Debtor failed to choose and check the appropriate box whether or not additional provisions are attached to the plan.

   f. The Trustee is unable to read the Type of Property that may be listed on Schedule B, Line Nos. 22 to 35. Schedule C does not contain any personal property listed on Schedule B and the Debtor failed to specify law on Schedule C.

   g. Debtor failed to list the name of the creditor and value of property on Schedule D.

   h. Schedule F was marked that the debtor has no creditors holding unsecured claim holders to report on Schedule F; it is not clear if this schedule was completed properly.

   i. The Statement of Financial Affairs is incomplete. The document provides no information in the entire document.

   j. The Debtor's voluntary petition fails to list Case No. 14-23740.

   k. Form B22C lists real property income in the amount of $400.00; this income is not listed on Schedule I.

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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

8. 14-22021-C-13 LINDA PUTMAN MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 7-8-14 [51]

Final Ruling: No appearance at the September 9, 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, 63 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

9.	14-26829-C-13 DPC-1	JAMES KINCAID C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-14 [18]

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 August 13, 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.

The court's decision is to sustain the Objection.

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

1. Debtor may not be able to make the payments called for under the plan. Debtor afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

   The Debtor formerly did business as "Kincaid's H20," Dckt. 1, and had income through 2012 from the business, Statement of Financial

Affairs, Dckt. No. 1, page 26, Question No. 1. The Debtor admitted at the meeting of creditors that they have previously lived in Nevada, and appears on title to property there, Schedule A. The Debtor now appears to be on a fixed income, pension, and social security.

The Internal Revenue Service has filed a claim, Claim No. 1, which reflects taxes owing from 2010-2012 of $13,779.03, with most of the taxes assessed April 14, 2014, but examination still pending for 2012 taxes. This is $7,423.49 more than the plan provides for as priority.

The Debtor's 2013 tax returns reflect an unexpected tax refund of $5,249.00 for tax year 2013 ($4,463.00 in a federal tax refund and $786.00 state refund).

a. Schedule J: Based on Schedule J, which reflects that : "Debtor is retired and travels to Montana and Nevada almost every other month which is why Debtor's transportation and food expenses are high," on Line 24 where the form asks if any increase or decrease is expected in the next year, Dckt. No. 1, the Trustee does not believe the Debtor can prove they can afford to make a higher payment.

b. Line No. 7 reflects a food and housekeeping expense of $850.00 per month for one person.

c. Line No. 17, Car Payment: Debtor lists $218.00. While this expense is probably for the 2002 Chevrolet Silverado, listed in Class 2A, the plan is 60 month plan. Debtor has disclosed extraordinary travel and the car is already 12 years old.

d. Line No. 21, the Debtor listed a $400.00 storage fee, presumable for the vehicles and boat, as well as $563.00 monthly expense for tobacco. The Debtor has $120.00 for medical and dental expenses and $217.65 for entertainment and recreation.

2. Liquidation: The Plan does not pay unsecured claim holder that they would receive in the event of a Chapter 7 liquidation under 11 U.S.C. § 1325(a)(4). Concurrently with this objection, the Trustee is objecting to the exemptions claimed as it appears that the Debtor may not be entitled to California exemptions.

The Debtor claimed $12,230.20 of exemptions of value in property, Schedule C, Dckt. No. 1,, which would be available for unsecured claim holders if the claim of exemptions are disallowed.

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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

10.	14-20830-C-13 JLB-3	DIANA OREHEK James L. Brunello	MOTION TO CONFIRM PLAN 7-23-14 [63]

Final Ruling: No appearance at the September 9, 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 23, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 23, 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.	14-26933-C-13 DPC-1	OTHERINE NELSON Eric John Schwab	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-6-14 [13]

Final Ruling: No appearance at the September 9, 2014 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the** Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.

12. 12-39435-C-13 DANIEL/SHANNON BAKER
RDS-4 Richard D. Steffan

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SACRAMENTO METROPOLITAN FIRE DISTRICT
8-13-14 [101]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2014. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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.

The Motion For Approval of Compromise is granted.

Shannon Baker and Daniel Baker, the Chapter 13 Debtors, ("Movants") requests that the court approve a compromise and settle competing claims and defenses with Sacramento Metropolitan Fire District ("Settlor").

The Movants filed their original Chapter 13 case on November 2, 2012. Pursuant to the Second Amended Plan, Dckt. No. 80, which was confirmed on September 24, 2013, Dckt. No. 100, the Additional Provisions section, the litigation to which this compromise regards is an asset of the estate, subject to any claims of exemptions.

Debtors filed a complaint, Eastern District of California Case No. 2:12-cv-02925-GEB-AC, filed on or about March 4, 2013, which alleged a claim under the ADA for failure to reasonably accommodate her medical condition, termination for a shoulder injury without due process and retaliation. The injuries included last wages, lost benefits, reduction in earnings and emotional distress/pain and suffering.

The Movants and the Settlor reached a compromise agreement that would pay $70,000.00, of which $7,500.00 is for pain and suffering, $14,000.00 for attorney fees and costs, and the remainder to be applied to lost wages and benefits, to Movants. This compromise is part of a "global" resolution which includes the settlement by means of a separate release, pending the approval of the Workers' Compensation Appeals Board, of WCAB Case Numbers ADJ 7233989 and ADJ 7651607, for a total of $5,000.00 which includes $750.00 in attorney's fees.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee responds to the Motion stating that, the Debtors' confirmed plan, filed on July 16, 2013, Dckt. No. 80, states in the additional provisions that:

> 2. Section 1, paragraph 1.02: Any net proceeds of the litigation referenced in the Schedule B, after any claims of exemption, will be delivered to the trustee for payment to creditors. Debtors will update, in writing, the trustee and special notice parties in January of each year regarding the status of the litigation.

The Debtors amended Schedules B and C on April 30, 2014, Dckt. No. 50. Debtors amended Schedule C claims $100.00 claimed as exempt for the Complaint for Damages, Dckt. No. 50 at 10.

The Trustee does not oppose the transaction. It appears after the $14,000.00 and $750.00 for attorney fees awarded to Stewart Katz, $100.00 claimed as exempt, the $55,250.00 will be paid into the debtors plan pursuant to the confirmed plan.

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).

Movant argues that the four factors have been met. The Declaration of Stweart Katz filed in Support of the Motion, Dckt. No. 103, states that the probabiltiy of success in this litigation, particularly as the facts developed and were uncovered in the course of litigation, undercut likelihood of plaintiff prevailing at trial. There are significant issues pertaining to causation, mitigation, what actually transpired in various meetings and conversations, and what can be inferred from the medical records, and potentially cripply credibility issues.

Additionally, there are legal defenses and case law that may have resulted in summary adjudication on a number of issues and were likely to have resulted in both *in limine* and instructional ruling that were not favorable to the plaintiff. These reasons support the proposed compromise.

The complexity, expense, and inconvenience of the litigation support the compromise. There are physical and mental health issues involved in the litigation which would require expensive and lengthy expert testimony, and entering the compromise will avoid the cost and delay associated with litigation. Even with the necessary expert testimony, Debtor's attorney asserts that Plaintiffs' odds at prevailing at trial would be low.

The interest of the creditors supports the compromise as the funds are assets of the bankruptcy estate, and there little value in making the estate wait further for an unknown result. Further, the compromise enables an efficient administration without the expense and delay associated with litigation.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. Pursuant to the terms of the Debtors' confirmed plan, any net proceeds of the litigation referenced in the Schedule B, after any claims of exemption, will be delivered to the trustee for payment to creditors. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Shannon Baker and Daniel Baker, the Chapter 13 Debtors, ("Movants") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Sacramento Metropolitan Fire District ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 104).

13. 14-22335-C-13 ROSEMARIE LANDRY MOTION TO CONFIRM PLAN
MOH-3 Michael O'Dowd Hays 7-22-14 [79]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the Third Amended Plan on the basis that Debtor failed to amend Schedules I and J to show Current Income and Expenses.

It appears that the Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6) or the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under median income and proposes plan payments of $5,420.00 total through July 25, 2014 (4 months); then $4,212.00 for 56 months with a 100% dividend to unsecured claim holders. The Debtor's Declaration in support of confirmation, Dckt. No. 81, describes the Debtor's income; however, Debtor has failed to amend Schedules I and J to show the Debtor's current income and expenses.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

14. 14-24236-C-13 TAMMY TROTTER-SCHUETTE MOTION TO CONFIRM PLAN
MLA-3 Mitchell L. Abdallah 7-22-14 [39]

Final Ruling: No appearance at the September 9, 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 22, 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). 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 22, 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.

15. 14-25640-C-13 LC-1 RANDALL/COLEEN KIMLER
Lorraine W. Crozier
MOTION TO CONFIRM PLAN
7-24-14 [17]

Final Ruling: No appearance at the September 9, 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 24, 2014. By the court's calculation, 47 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 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 24, 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.

16.	14-26742-C-13 ALF-1 **Thru #17**	WILLIAM BARRY AND KAREN BLUE Ashley R. Amerio	MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 8-4-14 [19]

Final Ruling: No appearance at the September 9, 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 respondent creditor, parties requesting special notice, and Office of the United States Trustee on August 4, 2014. By the court's calculation, 36 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 JP Morgan Chase Bank, N.A., "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by William Y Barry and Karen Ann Blue, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 904 Red River Drive, Westwood, California, "Property." Debtor seeks to value the Property at a fair market value of $427,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $521,512.00. The Plumas County Tax Collector holds a superior secured claim totaling $4,302.00. Creditor's second deed of trust secures a claim with a balance of approximately $128,974.00. 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 William Y Barry and Karen Ann Blue, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank, N.A. secured by a third in priority deed of trust recorded against the real property commonly known as 904 Red River Drive, Westwood, 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 $427,000.00 and is encumbered by senior liens securing claims in the amount of $525,814.00, which exceed the value of the Property which is subject to Creditor's lien.

17.	14-26742-C-13 DPC-1	WILLIAM BARRY AND KAREN BLUE Ashley R. Amerio	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-6-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 6, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that all sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtors are $3,397.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $3,397.00 is due on August 25, 2014. Debtors have paid $0.00 into the plan to date.

Additionally, the Debtors afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Plan relies on the Motion to Value the Secured Claim of JP Morgan Chase Bank, ALF-1, which is set for hearing on September 9, 2014. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

On this hearing date, the court granted Debtors' Motion to Value,

ALF-1, thus resolving this part of the Trustee's Objection. Based on the remaining issues relating to Debtors' delinquency, however, 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.

18. 14-27544-C-13 JUDITH BRICKEY
SJS-1 Scott J. Sagaria

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
8-5-14 [14]

Final Ruling: No appearance at the September 9, 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, respondent creditor, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 35 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 and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Judith Brickey, "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 [8453 Jonquil Way, Citrus Heights, California, "Property." Debtor seeks to value the Property at a fair market value of $196,486.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $236,721.71. Creditor's second deed of trust secures a claim with a balance of approximately $47,084.60. 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 Judith Brickey, "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 8453 Jonquil Way, Citrus Heights, 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 $196,486.00 and is encumbered by senior liens securing claims in the amount of $236,721.71, which exceed the value of the Property which is subject to Creditor's lien.

19. 13-20046-C-13 ELIZABETH BARRIOS CONTINUED MOTION TO MODIFY PLAN
RJ-1 Richard L. Jare 5-29-14 [54]

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 May 29, 2014. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan. According to the Trustee's calculations, the plan will complete in 72 months, as opposed to the 60 months proposed and allowed under 11 U.S.C. § 1322(d).

In a plan paying 0% to unsecured claim holders, the Debtor is proposing a plan payment of $1,170.00 for 8 more subsequent months, then increasing to $1,440.00 for the final 35 months of the plan, for a total under the plan of $79,650.00. The monthly class 1 contract installment is $1,052.35 according to the creditor, according to the Notice of Mortgage Payment Change filed with the court on June 25, 2014. According to the Trustee's calculations, if the ongoing mortgage payment is $1,052.35, the total term will be 72 months.

CONTINUANCE AND NOTICE OF WITHDRAWAL

The court continued the hearing on the matter from July 22, 2014, to this hearing date. Civil Minutes, Dckt. No. 66.

On September 2, 2014, the Trustee filed a Notice of Withdrawal of Trustee's Objection to Debtor's Motion to Modify the Chapter 13 Plan. The Notice states that the Chapter 13 Trustee withdraws Trustee's Objection to the Motion to Modify the Chapter 13 Plan, on the basis the Debtor's Objection to Notice of Mortgage Payment Change was sustained, Dckt. No. 68, on August 19, 2014. These results allow Class 1 ongoing contractual amount to remain at $872.00, thereby resolving the Trustee's objection to the feasibility has been resolved. Dckt. No. 71.

The Trustee's concerns with the proposed Plan having been resolved, the modified Plan is determined to comply 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 March 13, 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.]

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20. 14-26846-C-13 BRIAN/KATHLEEN FELION
Richard A. Chan

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-6-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 06, 2014. Fourteen days' notice is required. That requirement was met.

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.

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

1. Debtors cannot afford to make the plan payments or comply with the plan.

2. Debtors' plan relies on the Motion to Value Collateral of US Bank, NA, RAC-1.

The Motion to Value secured claim of U.S. Bank, N.A., Creditor, was granted on August 19, 2014. On August 7, 2014, the parties stipulated that the Creditor's claim shall be allowed as a non-priority general unsecured claim. The current objection was the only outstanding objection by the Trustee, which is now moot. The plan does comply with 11 U.S.C. §§ 1322 and 1325(a). 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 June 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.

21. 14-27050-C-13 ENRIQUE/MICHELLE SERRATO — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Mikalah R. Liviakis — 8-13-14 [24]

Local Rule 9014-1(f)(2) Motion - no opposition.

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 August 13, 2014. Fourteen days' notice is required. That requirement was met.

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 continue the hearing on the Objection to September 16, 2014 at 2:00 p.m.

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

1. Debtors cannot afford to make the plan payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

2. Debtors' plan relies on the Motion to Value Collateral of NeighborWorks.

On August 26, 2014, the Court continued the Motion to Value

Collateral of NeighborWorks, Creditor, until September 16, 2014. The parties stipulated to such continuance on August 25, 2014. Therefore, the court will continue the Objection to be heard at the same time as the Motion to Value, on September 16, 2014 at 2:00 p.m.

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 hearing on the Objection to confirmation the Plan is continued to September 16, 2014 at 2:00 p.m.

22. 14-25255-C-13 SHARON HOLLEY
DPC-1 Michael O'Dowd Hays

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
7-15-14 [33]

Tentative Ruling: The Objection to Confirmation 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 15, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to Confirmation 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.

The Objection to Confirmation is sustained.

On August 19, 2014, the court heard the Chapter 13 Trustee's Objection to Confirmation. The Chapter 13 Trustee opposed confirmation of the Plan for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on July 10, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Continued meeting is set for August 14, 2014 at 10:30 am.

2. Debtor is $41.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $270.00 is due on July 25, 2014. Debtor has paid $229.00 into the plan to date.

The Chapter 13 Trustee requested the court continue the Objection to September 9, 2014 at 2:00 p.m. The court so continued the matter. Since the

prior hearing, the Debtor appeared at the continued Meeting of Creditors. See Docket Entry: Trustee Reports, dated 08/15/14. Debtor's appearance at the Meeting resolves one of the Trustee's objections. The court lacks knowledge as to whether the Debtor brought plan payments current and will; therefore, sustain the Objection and not confirm the plan. 11 U.S.C. § 1325.

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 sustained and the plan is not confirmed.

23. 14-26961-C-13 GLENN/VELORES PURDY
CYB-1 Candace Y. Brooks
Thru #24

MOTION TO VALUE COLLATERAL OF KRISTINA M. JOHNSON, CHAPTER 11 TRUSTEE FOR THE ESTATE OF COMMUNITY HOME FINANCIAL SERVICES, INC.
8-8-14 [18]

Final Ruling: No appearance at the September 9, 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, respondent creditor, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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 Kristina M. Johnson, Chapter 11 Trustee for the Estate of Community Home Financial Services, Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4740 Brookside, Circle, Fairfield, California. The Debtor seeks to value the property at a fair market value of $357,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $413,178. Kristina M. Johnson, Chapter 11 Trustee for the Estate of Community Home Financial Services, Inc. second deed of trust secures a loan with a balance of approximately $101,539. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and

11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Kristina M. Johnson, Chapter 11 Trustee for the Estate of Community Home Financial Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 4740 Brookside, Circle, Fairfield, 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 $357,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

24.	14-26961-C-13 DPC-1	GLENN/VELORES PURDY Candace Y. Brooks	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-14 [28]

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 August 13, 2014. Fourteen days' notice is required. That requirement was met.

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 sustain the Objection.

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

1. The plan relies on the pending Motion to Value the secured claim of Kristina M. Johnson, Chapter 11 Trustee for the Estate of Community Home Financial Services, Inc. The Motion is set to be heard on September 9, 2014. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full and should be denied confirmations. 11 U.S.C. § 1325(a)(6).

2. Debtors plan relies on a total of four (4) additional Motions to Value secured claims of various creditors. To date, Debtors have not

filed these motions. Debtor cannot afford to make the payments or comply with the plan if these motions are not filed and granted. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). While the court is granting the Motion to Value the secured claim of Kristina M. Johnson, Chapter 11 Trustee for the Estate of Community Home Financial Services, Inc., the Debtors have not filed the other motions to value. 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 xxxx 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.

25. 12-36865-C-13 CHARLES/MELISSA WALKER MOTION TO INCUR DEBT
SDB-3 W. Scott de Bie 8-25-14 [38]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 25, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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.

The Motion to Incur Debt is granted.

The motion seeks permission to obtain credit for Debtors to refinance the mortgage secured by their residence. Debtors have negotiated refinancing terms with PMAC Lending Services, Inc. on the following terms:

Total price:	$273,744.50
Monthly Payment:	$1,366.77
Taxes and Insurance:	$203.86
Interest Rate:	4.375% annual

Total reduction in current monthly housing expense of $188.23.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 the Motion is granted and Charles Paul Walker and Melissa Dawn Walker, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 42.

26. 14-26366-C-13 WILLIAM/TABITHA HAMILTON OBJECTION TO CONFIRMATION OF
DPC-1 Marc A. Caraska PLAN BY DAVID P. CUSICK
Thru #27 8-6-14 [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 August 6, 2014. Fourteen days' notice is required. That requirement was met.

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 sustain the Objection.

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

1. The Debtors propose to value the secured claims of Toyota Financial Services and Travis Credit Union, but have not filed any motions to value collateral.

2. The Debtors cannot make the payments under the plan or comply with the plan.

3. It appears that the Debtors cannot make the payments required under Section 1325(a)(6) because their projected disposable monthly income listed on Schedule J is -$724.49, and they propose a plan payment of

$610.85.

4. The plan is not the Debtors' best efforts under 1325(b). Trustee is not certain that Debtors have reported all of their income on the Current Monthly Income form. Debtor William Hamilton's Schedule I lists income as $2,674.76 while Current Monthly Income states it is $961.57. Debtor Tabitha Hamilton's income on CMI is reported at $2,604.16, but is listed at $0.00 on Schedule I. At the Meeting of Creditors on July 31, 2014, Tabitha Hamilton admitted to being employed and earning $4,040 per month in gross income. D

5. Debtor's attorney is effectively opting out of LR 2016-1(c). On the Disclosure of Compensation of Attorney for Debtors, the item 6 lists that the attorney services do not include some services required under LR 2016-1(c), such as relief from stay actions.

The Trustee's objection remains unresolved. Debtors have not set a Motion to Value the secured claim of Travis Credit Union. Further, Debtors are not adequately disclosing their monthly income. The discrepancies pointed out by the Trustee cause the court grave concern regarding the veracity of Debtors' disclosures, in general. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

27. 14-26366-C-13 JDM-1 | WILLIAM/TABITHA HAMILTON
Marc A. Caraska | OBJECTION TO CONFIRMATION OF PLAN BY TRAVIS CREDIT UNION
7-8-14 [18]

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 8, 2014. Fourteen days' notice is required. That requirement was met.

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 sustain the Objection.

Creditor, Travis Credit Union, opposes confirmation of the Plan on the following grounds:

Credit Union holds a purchase money security interest in Debtor's 2008 Honda Accord, and this claim fulfills all of the requirements of the hanging paragraph. Therefore, the Credit Union's claim cannot be crammed down.

It does not appear that Debtors will be able to make all payments under the plan and to comply with the plan. Debtors' plan proposes to make monthly payments of $610.85, but their net income, after deducting expenses, is -$724.49.

Debtors entered in a Retail Installment Sale Contract with Mel Rapton Honda on September 9, 2012, when the Debtors purchased a 2008 Honda Accord from the dealer. Mel Rapton Honda held a purchase money security interest in the automobile. Travis Credit Union subsequently purchased the rights of Mel Rapton Honda on or about September 9, 2012. Assignment of a purchase money security interest does not affect the purchase-money character of the security interest. *In re Trejos*, 374 B.R. 210, 215-16 (B.A.P. 9th Cir. 2007). Additionally, the Court has sustained the Chapter 13 Trustee's objection to confirmation of the Debtors' plan. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Therefore, Travis Credit Union's objection is sustained and the Plan is not confirmed.

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

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

28. 14-23369-C-13 JESUS/TERESA BECERRA MOTION TO CONFIRM PLAN
TOG-4 Thomas O. Gillis 7-15-14 [42]

Final Ruling: No appearance at the September 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2014. Forty-two days' notice is required. That requirement was met.

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.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 15, 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.

29. 14-28272-C-13 DIANNE AKZAM — MOTION TO EXTEND AUTOMATIC STAY
DA-1 Pro Se — 8-26-14 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 26, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is denied.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case pending within the last twelve months. Debtor's first bankruptcy case (No. 14-23825) was filed on April 14, 2014 and dismissed on July 22, 2014 for ineligibility (Dkt. 49). Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

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

1. Why was the previous plan filed?

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

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

Here, the presumption of bad faith arises because Debtor did not file briefing that credit counseling was completed during the 180-day period preceding the date of the filing of the petition. 11 U.S.C. § 109(h).

Debtor now argues that the current case was filed in good faith. Debtor states she made an error regarding credit counseling on Exhibit D to her schedules, which she has since corrected. Debtor asserts that she consulted an attorney regarding the issue and is prepared to move forward.

On review of the Docket in the instant case, the court notes that Debtor did file her Exhibit D with the Credit Counseling certificate attached. Dkt. 1.

While Debtor has remedied the immediate issue with the previous filing, the court remains concerned that Debtor will not prosecute this case in good faith. First, Debtor has only managed to file a skeleton petition with no schedules. The court finds this suspect, as Debtor is very familiar with the Bankruptcy Court in the Eastern District. Despite Debtor only disclosing one previous bankruptcy case in the past eight years on her skeleton petition (Case No. 14-2385), Debtor has had six (6) cases pending in the Eastern District at different times since September 2010. Prior to 2010, Debtor had filed three other cases, receiving a Chapter 7 discharge 2002.

Debtor's relevant filing history is as follows (all petitions were filed under Chapter 13 of the Code):

Case No.	**Filed**	**Dismissed**
10-45213	09/22/10	12/16/10
11-20282	01/04/11	03/18/11
11-43187	09/27/11	12/14/11

12-37369	09/27/12	11/19/12
14-23825	04/14/14	07/23/14
14-28272	08/14/14	Current Case

Debtor has managed to confirm zero Chapter 13 plans over the course of her history in the Eastern District. Debtor has filed repeatedly in a *pro se* capacity and admitted that the reason her previous case was dismissed was because she filed *pro se* and did not understand the 180-day rule. Debtor presents the court with no reason to belive the instant case was filed with the good faith effort aimed at confirming a Chapter 13 plan. Debtor did not hire an attorney to assist with petition preparation and case prosecution, Debtor did not disclose her relevant bankruptcy history, Debtor did not file her schedules with her petition and has not filed an Amended Petition, and there is a pending notice of incomplete filing and intent of motion to dismiss if the documents are not timely filed.

Debtor has not rebutted the presumption of bad faith under the facts of this case and the automatic stay is not extended. The Debtor's history leaves the court with no reason to believe she will confirm a Chapter 13 plan within a reasonable time.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay 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 denied without prejudice and the Automatic Stay is not extended.

30. 14-27076-C-13 NIKOLAY MARTYNOV
DPC-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-13-14 [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 August 13, 2014. Fourteen 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 sustain the Objection.

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

1. Debtor did not list an expense for business taxes and no expense was listed for medical or business insurance. It is not clear to the Trustee whether the net income listed on Schedule J is accurate and; therefore, not clear whether Debtor can make the payments under the plan or comply with the plan. 11 1325(a)(6).
2.
3. Schedule J discloses five (5) adult dependents living with Debtor but shows no income from these dependents. Trustee is further confused because Form B22C discloses that Debtor has a household size of two (2). The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b).

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

objection is sustained and the Plan is not confirmed.

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

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

31. 14-21979-C-13 MICHAEL/TERESA BURK CONTINUED MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria 7-8-14 [37]

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 July 8, 2014. Thirty-five days' notice is required. That requirement was met.

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.

The court continued the hearing on this Motion from August 19, 2014. No further briefing concerning the Motion was updated to the court's docket.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the proposed modification because Debtors are delinquent $3,642.00 under the proposed plan. The case was filed February 5, 2014, and five (5) payments have come due under the confirmed plan. Payments totaling $17,953 have come due under the proposed modified plan. Debtors' plan states that Debtors have paid a total of $14,311 to the Trustee through June 2014 with the July payment changing to $3,642.00 for the life of the plan. Debtors have paid the Trustee $14,311 through June 2014, with the last payment of $3,642 being posted on June 30, 2014. However, Debtors have made no plan payment for July 2014 and one more plan payment of $3,642 will come due on August 25, 2014.

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.

32. 13-27180-C-13 TIMOTHY/KIMBERLY NELSON CONTINUED MOTION TO MODIFY PLAN
RK-10 Richard Kwun 7-7-14 [99]
Thru #33

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. Thirty-five days' notice is required. That requirement was met.

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.

PRIOR HEARING

The court first heard this Motion on August 19, 2014. The court permitted a continuance of the hearing for Debtor to resolve some outstanding issues raised by the Trustee and the court.

TRUSTEE'S OBJECTION

The Chapter 13 Trustee opposed the proposed plan modifications for the following reason(s):

1. Debtor's modified plan, pursuant to section 2.13, proposed an unsecured priority claim to the Internal Revenue Service be paid through the plan in the amount of $131,396.27. The Trustee objects to the extend that the plan calls for post-petition taxes to be paid without a proof of claim. The creditor has not amended his claim to include post-petition taxes and Debtor does not have the ability to filed a proof of claim on behalf of a creditors.

11 U.S.C. § 1302.

The IRS filed a proof of claim on June 20, 2013 (Claim 6), for $80,758.80. The claim is comprised of $3,308.94 in secured claims, $71,177.27 in unsecured priority claims, and $6,272.59 in unsecured general claims.

2. Debtors' Schedules I & J were not filed using the Official Form B 6I and B 6J.

3. Debtors' declaration (Dkt. 101) does not provide a sufficient explanation for the 2013 tax liability.

DEBTORS' RESPONSE

Debtor responded to the Trustee's opposition and provides the following:

1. The IRS Insolvency Division has filed a Proof of Claim that includes the 2013 taxes showing $131,396.27 as entitled to priority.

2. Debtors will filed a stipulation concerning tax liabilities with the Franchise Tax Board before te hearing on confirmation.

3. Debtors filed a supplemental declaration referring to updated Schedules I & J, which are filed as exhibits to the response.

4. The Declaration of Timothy Nelson explains that the reasons for the tax liability are as follows:

a. Debtors' central air conditioning fell into disrepair, costing about $13,000 to replace.

b. Debtors' car clutch had to be replaced at $1,300.

c. Debtors had to pay $6,000 in 2013 as a down payment for a 2011 Ford Edge

d. Lighting in the home was replace as a cost of $3-4,000.

e. Lawn sprinklers required replacing.

DISCUSSION AND RULING

The Amended Proof of Claim filed by the Internal Revenue Service resolves Trustee's Objection, in part, because it asserts a priority unsecured claim of $131,396.27, as provided for in Debtors' modified plan.

After the first hearing, Debtor filed updated and Amended Schedules I & J on the court's docket, using the appropriate forms. Dkt. 116.

The court remains concerned as to whether Debtor provided Trustee with the specific items he requested, namely: estimates, statements, or proof of payments for repairs. Debtor did not provide sufficient support for the 2013 tax liability and no supplemental declaration stating that Debtor provided support to the Trustee was uploaded to the court's docket.

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

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

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

33. 13-27180-C-13 RK-11 | TIMOTHY/KIMBERLY NELSON
Richard Kwun | CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF BOWMAN AND ASSOCIATES, APC FOR RICHARD KWUN, DEBTORS' ATTORNEY(S)
7-7-14 [92]

Tentative Ruling: 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).

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 7, 2014. Twenty-eight days' notice is required. That requirement was met.

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 defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Richard Kwun, the Attorney ("Applicant") for Timothy and Kimberly Nelson the Chapter 13 Debtors ("Client"), makes a first and final Request for the Allowance of additional Fees and Expenses in this case. The period for which the fees are requested is March 25, 2013 through July 3, 2014.

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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Richard Kwun	23.7	$240.00	$5,688.00
Total Fees For Period of Application			$5,688.00

Applicant was previously approved for $4,000 in fees which has been paid in full.

The court is confused by applicant pleadings; however, because in the moving papers, Applicant computes the total hours at 23.7 billed at a rate of $240 and concludes that fees total $5,640.00 (deduct $4,000 previously awarded to reach the requested amount of $1,640). However, when the court multiplies 23.7 by $240 per hour, the resulting fee is $5,688.00. That figure, reduced by $4,000 previously received, leaves a fee balance of $1,688.00. There is a $48.00 discrepancy in the numbers presented by counsel; it appears that counsel left out of his calculation the 0.2 hours expended in relation to "Hearings" concerning the fee application and motion to modify plan. The court will move forward with the request as presented by counsel and afford counsel the opportunity to adjust the amount requested at the hearing on the Application.

The court finds that the hourly rates requested reasonable and that Applicant effectively used appropriate rates for the services provided.

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

Fees $1,640
Costs and Expenses $73.32

pursuant to this Application 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 Richard Kwun("Applicant"), Attorney, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Richard Kwun is allowed the following fees and expenses as a professional of the Estate:
>
> Richard Kwun, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,640
> Expenses in the amount of $73.32,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution 13 case under the confirmed Plan.

34. 14-24580-C-13 MYKHAYLO/TETYANA ARNAUT MOTION TO CONFIRM PLAN
CAH-1 C. Anthony Hughes 7-12-14 [21]

Final Ruling: No appearance at the September 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2014. Forty-two days' notice is required. That requirement was met.

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.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 12, 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.

35. 14-27180-C-13 DPC-1 | ESMAEL SHAHGHADAMI
C. Anthony Hughes | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-13-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2014. Fourteen 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 sustain the Objection.

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

1. The plan calls for a lump sum payment of $315,000 by August 2014. Schedule B discloses a $315,000 interest in the following property:

"The debtor's father has 3 houses in Iran. He passed away 6 years ago. There are 4 heirs (which includes the debtor)." Sch. B, Dkt. 1. Debtor admitted at the meeting of creditors that he does not anticipate receiving the lump sum by August 2014.

Debtor filed a Chapter 7 bankruptcy in 2013 (13-25497) which does not schedule this asset and it appears the asset remains property of the Chapter 7 estate.

The Trustee alerts the court to the following filing history of Debtor and Debtor's spouse:

Case #12-41342: Chapter 13 filed by Debtor's spouse dismissed 4/4/13
Case #12-36062: Chapter 13 filed by Debtor's spouse dismissed 11/12/12
Case #13-25497: Chapter 7 discharge received
Case #14-22294: Chapter 13 dismissed on 3/24/14
Case #14-25398: Chapter 13 dismissed 06/09/14

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

3. Trustee requested and Debtor failed to provide Trustee with answers to certain questions about Debtor's business and other documentation.

4. The plan calls for attorneys' fees to be paid under the "no look" fee, but Debtor's attorney holds a third deed of trust and Trustee objects to a fee granted under a "no look" basis.

DISCUSSION AND RULING

The court's decision is to sustain the objection and not confirm the plan.

The United States Trustee recently requested the court reopen the Chapter 7 case filed by Debtor and Debtor's spouse on 04/22/2013. In the Chapter 7 Trustee's declaration (Dkt. 58, case No. 13-25497), he states that during the course of the Chapter 7 case, neither Debtor nor his spouse disclosed the Iranian property and Debtor's interest in the property was squarely property of the estate at the time the Chapter 7 case was filed. The Chapter 7 Trustee is attempting to administer the asset. As the asset that Debtor proposes using to make the lump sum payment is not property of his Chapter 13 estate, the plan as proposed is not feasible and will not be confirmed.

The court is also sustaining the objection on the tax, business documentation, and attorneys' fees issues. These matters require attention and resolution prior to plan confirmation.

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 xxxx having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

36.	11-42286-C-13 BLG-4	FERNANDO/GABRIELA CASTELLANOS Pauldeep Bains	MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS' ATTORNEY(S) 8-5-14 [63]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 5, 2014. Twenty-eight days' notice is required. That requirement was met.

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 defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is continued to [date] at [time].

FEES REQUESTED

Chad M. Johnson, the Attorney ("Applicant") for Debtors ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period March 12, 2014 through September 2, 2014.

Applicant provides the following pleading concerning the substantial and unanticipated post-confirmation work that justifies the fees sought:

- Communicated with Debtors regarding rights and responsibilities vis-avis creditors, the US Trustee, and the Chapter 13 Trustee

- Motion to Incur debt for a refinance. Prepared motion, communicated with Trustee's office, and attended hearing. 5.3 hours.

- Motion to Modify as a result of a modified mortgage and change in household income. 5.1 hours.

- Motion for Compensation. 1 hour.

Movant argues that all the abovementioned work was necessary and beneficial to the success of Debtors' ability to complete the Chapter 13 plan. Movant asserts that the Motion to Incur was necessary for Debtors to refinance and the resulting Motion to Modify was required to reflect changes in household income and expenses. The court is satisfied that the post-confirmation work was not foreseeable and was substantial in nature as Debtors did not anticipate a refinance in the confirmation process of their previous plan and did not anticipate co-Debtor changing employment and adjusting household income.

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee filed the following in response to the fee request:

1. The Motion to Incur was hearing on April 29, 2014 and not May 1, 2014, as indicated in the invoice (Exhibit 1, Dkt. 66).
2. Page 5, lines #3-4 is for 07/30/14 and states work performed as "Prepare for, travel to and attend 341." The Trustee notes that Debtors' Motion to Modify was the actual matter at issue around that date, but was specifically heard on July 29, 2014.
3. Counsel listed the date for "preparation of Motion for Attorney Fees and Expenses" as 12/30/13. This date is incorrect.

Trustee requests the court grant the Motion so long as the above concerns are addressed.

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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
PB	6	$300.00	$1,800.00
LS	.2	$85.00	$17.00
TP	2.3	$185.00	$425.50
JW	1	$185.00	$185.00
Total Fees For Period of Application			$2,427.50

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $29.01 pursuant to this applicant.

DISCUSSION & RULING

Here, the court cannot make a full and complete determination that the amount of requested compensation is reasonable. First, the court reiterates the issues pointed out by the Trustee. The evidentiary record submitted to support the reasonableness of the services rendered contains mistakes that cause the court to question the authenticity of the record. Second, the invoice provides the initials of the individuals who performed different services, but no where in the pleadings does it state the full names of these individuals or their positions at the firm. The court is left to generically assume the positions based on the hourly rates provided in the final paragraphs of the motion. Further, the court is statutorily required to review the professional qualifications of the individuals providing services; however, no resumes or declarations concerning qualifications were provided. As such, the court cannot determine whether the services were beneficial to the Client and bankruptcy estate and reasonable.

The court's decision is to continue the hearing on the Motion to **[date]** at **[time]** to permit counsel to submit a corrected invoice and the professional qualifications of individuals who rendered services for which compensation is sought under this Motion.

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 Chad M. Johnson ("Applicant"), Attorney, having been presented to the court, and upon review of the

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

IT IS ORDERED that the Motion is continued to **[date]** at **[time]** .

37. 13-23589-C-13 ANTHONY/ANGELIKA SARGETIS — MOTION TO SELL
ULC-6 — Julie B. Gustavson — 8-21-14 [130]

Final Ruling: The Debtors having filed a Notice of Withdrawal on August 28, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

38. 13-33092-C-13 FELIX/LADORA GARCIA — CONTINUED MOTION TO CONFIRM PLAN
CJJ-5 Charnel J. James — 7-7-14 [141]

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 July 7, 2014. Thirty-five days' notice is required. That requirement was met.

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.

PRIOR HEARING

The court heard the Motion on August 19, 2014 and continued the hearing to permit Debtors time to resolve the Trustee's Objections. The court reviewed the case docket and did not find supplemental pleadings addressing the Trustee's Objection and; therefore, restates its tentative ruling from the previous hearing:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor is $88.60 delinquent in plan payments to the Trustee to date and the next scheduled payment of $263.48 is due on July

25, 2014. Debtor has paid $1,228.80 into the plan to date.

2. Trustee previously objected to confirmation and the following objections remain outstanding:

3. Attorneys' Fees: The case was filed as Chapter 7 and converted to Chapter 13 on January 24, 2014. The Disclosure of Compensation of Attorney for Debtor provides that counsel agreed to accept $1,200 for her services. Prior to the filing of the statement, counsel received $300.00, leaving a balance due of $900.00. The Statement was filed by Rajdep Chima, who is not currently showing as attorney of record in the case.

   In the Rights and Responsibilities filed on February 7, 2014 and the Chapter 13 Plan, Debtors state they paid their attorney $1,200.00. It appears Debtor paid $900.00 sometime between October 8, 2013 through January 25, 2014. This means Debtor may have as much as $900.00 in excess income.

4. Debtors cannot make the payments required under the plan and the plan may not be Debtors' best efforts. 11 U.S.C. §§ 1325(a)(6) & (b). Debtor made changes to income and expenses on April 18, 2014 without explanation as to why the changes occurred.

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.