UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 9, 2014 at 3:00 p.m.

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1. 10-53003-E-13 SCOTT/ANA PANNETTA — CONTINUED MOTION TO MODIFY PLAN
HLG-4 Kristy A. Hernandez — 7-8-14 [88]

Tentative Ruling: The Motion to Modify Plan 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Modify 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 Motion to Confirm Second Modified Chapter 13 Plan is denied.

Scott and Ana Pannetta ("Debtor") filed this Motion to Confirm Second Modified Chapter 13 Plan on July 9, 2014. Debtor is seeking to reduce monthly plan payments, add Vallejo Sanitation and Flood as a Class 2(C) claimant, to decrease the Class 5 claim of the Internal Revenue Services, to decrease Class 7 general unsecured creditors' monthly dividend, and to add a provision to reflect the actual remitted payments into plan to-date as well as ongoing payments.

The instant Motion to Confirm Second Modified Chapter 13 Plan was originally set for hearing on August 26, 2014. However, because a Motion to Incur Unsecured Financing and Motion to Approve Loan Modification are both scheduled for hearing on September 9, 2014 at 3:00 p.m., the court continued the instant motion to be heard in conjunction with the two pending motions.

DEBTOR'S MOTION TO CONFIRM SECOND MODIFIED CHAPTER 13 PLAN

The Debtor seeks to modify the confirmed plan because Debtor is unable to afford the step-up monthly plan payment to $345.00 per month due to Debtor's income not increasing sufficiently to support the increase payment. However, Debtor argues that they have "trimmed down" their month expenses so that a step-up in the monthly payment to $205.00 per month is affordable to Debtor.

In support of the Motion to Modify, the two debtors in this case provided their declaration under penalty of perjury. Dckt. 111. In this Declaration, their statements under penalty of perjury include the following:

A. The two debtors anticipated an increase in income in month 34 of the plan. (The Declaration does not state what reasonable, good faith, bona fide basis they had for such a belief.)

B. The Debtor 2's income has decreased, the income of Debtor 1 has increased due to having both a full time and second part-time job.

C. However, the Declaration further states that at some undisclosed time the mortgage payment for Debtor decreased by $903.00 a month, so they can now afford to decrease the required increased plan payment to $205.00 (with no explanation as to where the additional $798.00 of reduced monthly mortgage payment is being spent by Debtor).

D. The Declaration state that Debtor did not obtain approval for the loan modification because they "did not know we needed to do so...." It appears that they blame their prior counsel, stating that after speaking with their new attorney they "now know that such approval is a requirement...."

E. The Declaration states that there has not been a default in the (minimal) $23 (1 month), $55 (29 months) and $88 (4 month) payments which were required before the promised $345.00 step-up payment amount of $345 for 26 months, which Debtor purports to now be unable to make.

F. The Declaration then states the personal conclusions of law by each of the two debtors, including,

   1. Legal conclusions that the Modified Plan complies with 11 U.S.C. §§ 1322(a), 1322(b), and 1322(c).

   2. Legal conclusion that the Modified Plan complies with 11 U.S.C. § 1325(a), as the Debtor, and each of them, have

determined that the proposed Modified Plan complies with (i) the provisions of Chapter 13 and (ii) all other applicable (which they have determined) provisions of the Bankruptcy Code.

3. Legal conclusion that the Modified Plan has been proposed in good faith.

4. Legal conclusion that the Modified Plan has not been proposed by any means not forbidden by law. FN.1.

FN.1. When the court is presented with declarations by law person debtors which state, under penalty of perjury conclusions of law, it appears likely that the declarant has not read the declaration but merely signed it because, "it means that I win, irrespective of whether I know anything about what is in the declaration." This undercuts the credibility, and good faith, of the declarant(s) on all points in the declaration and the prosecution of the case.

G. Other statements are made by Debtor in the Declaration which are just general statements of law, such as "All secured creditors provided for have either accepted the Modified Plan, the Modified Plan provides to pay the creditors, or we are surrendering the property securing the claim(s)." (This is merely parroting the statutory language of 11 U.S.C. § 1325(a)(5). Such a parroted statement appears to show that Debtor does not know, or care, what treatment is provided in the Plan, but merely "I'll say whatever I have to in order to 'win.'"

On August 12, 2014 Debtor filed an Amended Motion to Confirm Second Modified Plan. This Amended Motion, in part, states with particularity (Fed. R. Bankr. P. 9013) the following grounds:

A. As of July 8, 2014, Debtor's confirmed plan is in month 42 of the 60 month term.

B. Debtor has paid $3,787.00 into the plan (which averages $90.16 per month over 42 months).

C. Debtor cannot now afford to make the $345.00 step-up payment (upon which confirmation of the existing confirmed plan was premised).

D. However, due to a loan modification (Debtor not identifying when the loan modification occurred), which reduced the monthly mortgage payment on their residence by $909.00 a month, Debtor proposes to "step up" the plan payment to $205.00 a month for the remainder of the plan (which is a 41% reduction of what is required under the existing confirmed plan).

E. The proposed Modified Plan would reduce the general unsecured claim dividend from 5% to 2%.

The Debtor seeks to make the following amendments under 11 U.S.C. §§ 1329, 1322(a), 1322(b), 1323(c), and 1325(a):

A. To decrease monthly plan payments from $346.00 to $205.00 beginning month forty-one (41) of the plan, or with the June 2014 plan payment.

B. To add Vallejo Sanitation and Flood to Class 2(C) with a claim amount of $265.70 and monthly dividend of $0.00.

C. To reduce Internal Revenue Service's Class 5 claim from $2,947.55 to $2,698.78.

D. To decrease Class 7 General unsecured creditors' monthly dividend from 5% to 2%.

E. To add the provision that Debtors have not remitted the payments into the plan as set forth in the Confirmed Plan.

As a preliminary note, Debtor has filed — Schedules I and — Schedules J in this case. These are:

Original and Amended Schedules I

Original Schedule I, Filed December 17, 2010, Dckt. 1	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$4,401	
Debtor 1 Deductions	($1,882)	
Debtor 2 Wage	$3,048	
Debtor 2 Deductions	($833)	
Combined Monthly Income As Computed by Debtor		$4,734

First Amended/Supplemental Schedule I, Filed February 16, 2011, Dckt 22	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$4,401	
Debtor 1 Deductions	($1,882)	

Debtor 1 Second Job (net income)	$900	
Debtor 2 Wage	$3,048	
Debtor 2 Deductions	($833)	
Combined Monthly Income As Computed by Debtor		$5,634

Second Amended/Supplemental Schedule I, Filed February 16, 2011, Dckt 22	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$4,401	
Debtor 1 Deductions	($1,882)	
Debtor 1 Second Job (net income)	$900	
Debtor 2 Wage	$3,048	
Debtor 2 Deductions	($833)	
Combined Monthly Income As Computed by Debtor		$5,634

Third Amended/Supplemental Schedule I, Filed April 25, 2014, Dckt 70	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$5,450	
Debtor 1 Deductions (includes deductions for loans paid off in 2013)	**($4,077)**	
Debtor 1 Second Job (net income)	$1,220	
Debtor 2 Wage	$3,048	
Debtor 2 Deductions	($833)	
Combined Monthly Income As Computed by Debtor		$4,808

Fourth Amended/Supplemental Schedule I, Filed August 11, 2014, Dckt 106	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$6,894	
Debtor 1 Deductions (includes deductions for loans paid off in 2013 and $896 in voluntary retirement contributions in addition to the FERS federal defined pension plan benefits)	**($3,611)**	
Debtor 1 Second Job (net income)	None Disclosed	
Debtor 2 Wage	$1,488	
Debtor 2 Deductions (includes $121 for "Voluntary Benefit)	($347)	
Combined Monthly Income As Computed by Debtor		$4,424

Fifth Amended/Supplemental Schedule I, Filed August 13, 2014, Dckt 126	**Rounded to Nearest Whole Dollar**	
Debtor 1 Wage	$6,894	
Debtor 1 Deductions (includes deductions for loans paid off in 2013 and $896 in voluntary retirement contributions in addition to the FERS federal defined pension plan benefits)	**($3,611)**	
Debtor 1 Second Job (net income)	None Disclosed	
Debtor 2 Wage	$1,488	
Debtor 2 Deductions (includes $121 for "Voluntary Benefit)	($347)	
Combined Monthly Income As Computed by Debtor		$4,424

Original and Amended Schedules J

Original Schedule J, Filed December 17, 2010, Dckt. 1	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,710)	
Current Monthly Income From then current Schedule I	$4,734	
Monthly Net Income As Computed by Debtor		$24

First Amended/Supplemental Schedule J, Filed February 16, 2011, Dckt. 22	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($5,578)	
Current Monthly Income From then current Schedule I	$5,634	
Monthly Net Income As Computed by Debtor		$56

Second Amended/Supplemental Schedule J, Filed April 14, 2014, Dckt. 57	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,805)	
Current Monthly Income From then current Schedule I (which includes deductions for loan paid off in 2013)	$5,634	
Monthly Net Income As Computed by Debtor		$203

(The Monthly Net Income as computed based on the then current Amended Schedule I filed with the court)	$829	(Though no amended or supplemental Schedule I was filed, Debtor showed income of only $4,808 on the Second Amended Schedule J)

Third Amended/Supplemental Schedule J, Filed April 25, 2014, Dckt. 70	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,605)	
Current Monthly Income From then current Schedule I	$4,808	
Monthly Net Income As Computed by Debtor		$203

Fourth Amended/Supplemental Schedule J, Filed July 8, 2014, Dckts. 86, 87	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,600)	
Current Monthly Income From then current Schedule I (which includes deductions for loans paid off in 2013)	$4,808	
Monthly Net Income As Computed by Debtor		$208

Fifth Amended/Supplemental Schedule J, Filed August 11, 2014, Dckt. 106	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,216)	
Current Monthly Income From then current Schedule I (which includes deductions for loans paid off in 2013)	$4,423	

Monthly Net Income As Computed by Debtor		$207

Sixth Amended/Supplemental Schedule J, Filed August 13, 2014, Dckt. 126	**Rounded to Nearest Whole Dollar**	
Monthly Expenses	($4,216)	
Current Monthly Income From then current Schedule I (which includes deductions for loans paid off in 2013)	$4,423	
Monthly Net Income As Computed by Debtor		$207

To support confirmation, Debtor provides under penalty of perjury a Supplemental Schedule I to show the current income. Exhibit B, Dckt. 91. This Statement of Income is compared to the prior statement of income under penalty of perjury in the prior Schedule I.

	Exhibit B, Dckt. 91,
Debtor 1	**(cents rounded to the nearest whole dollar)**
Gross Wages	$5,450
Tax, Medicare, SS	($2,095)
Insurance	**($1,588)**
Union Dues	($94)
Life Ins	($158)
FERS	($70)
TSP Loan (ends 6/21/13)	($72)
Second Job-Allied Barton (Net Income - deductions and withholding not disclosed)	$1,220

Debtor 2	
Gross Wages	$3,048
Tax, Medicare, SS	($562)
Life Ins	($13)
401k Loan (ends 9/25/13)	($257)
Combined Monthly Income Stated Under Penalty of Perjury (rounded to nearest whole dollar)	$4,809
Add Back Non-Existent TSP Loan Deduction as of July 2013 FN.3	$72
Add Back Non-Existent 401k Loan Deduction as of October 2013 FN.3	$257
Accurate Current Combined Monthly Income (rounded to the nearest whole dollar)	$5,138

FN.3. That each of these two Debtors would state that they Current Monthly Post-Petition Income is $4,810, for which deductions for two non-existent loans were made, manifests either an intentional misrepresentation to deceive the court, creditors, Chapter 13 Trustee, U.S. Trustee, and all other parties in interest or an abject failure to read and understand declarations and Schedules which are made under penalty of perjury and relied upon by the court and all parties in interest. Further, not disclosing the withholding and deductions from the part-time job raises further credibility questions.

Debtor then provides as Exhibit C a Statement of Current Expenses. Using the inaccurately low Current Monthly Income (having listed a non-existent deduction for TSP and 401k loans which were paid off by October 2013), Debtor computes the inaccurate monthly net income of $208 which is to be paid under the proposed Modified Plan.

Expense	Amount Stated by Debtor
Mortgage	($1,082)
Home Maintenance	($100)

Electricity/Gas	($229)
Water/Sewer	($97)
Telephone, Internet, Cable	($132)
Cell Phone	($91)
Garbage	($95)
Food/Housekeeping	($665)
Clothing/Laundry	($150)
Medical/Dental	($200)
Transportation	($650)
Entertainment	($48)
Charitable	**($100)**
Life Ins (in addition to deductions from paychecks)	**($100)**
Vehicle Ins	($66)
Personal Grooming	($55)
Childcare	($300)
Educational Exp	($140)
Auto Repairs, Maintenance, Registration (in addition to the $650 a month transportation expense and $66 vehicle insurance expense) FN.4.	($300)
Total Month Expenses Stated by Debtor	($4,600)

FN.4. Taken at face value, these two debtors have vehicle expenses, not including car payments, of $983.00 each and every month. The Declaration provided by Debtor offers no testimony as to why or how such expense actually exists and is reasonable.

CHAPTER 13 TRUSTEE OBJECTION

The Chapter 13 Trustee opposes the motion on the basis that the income and expense information for the Debtor 2 as of the August 2014 confirmation hearing is stated under penalty of perjury to be exactly the same as at the time of filing on 12-17-10. The Debtor indicates a 401K loan repayment deduction of $257.23 ending 9-25-13. Additionally the debtor states in the declaration that "My full-time employment was terminated and I have been reduced to a twenty-four hour part-time employee with decreased wages from $15.46 per hour to $11.00 per hour." Trustee states the debtor has not submitted recent pay stubs in support of the schedule. Additionally the debtors stated in item 3 of the declaration "our monthly household income has remained the same."

Trustee also states the information for Debtor 1 is reported incorrectly on the form. A second job is reported net on line 8h. The instructions state this is to be combined on lines 2 through 7.

The Trustee notes the schedule reports a deduction for a TSP loan in the amount of $71.98 which was to have ended 6-21-13. The Trustee is unable to compare this Schedule I with the one filed at the time the bankruptcy case was commenced. The Trustee does note that gross wages are reported as $5,450.36 versus $4,401.08 at the time of filing the petition. Payroll deductions increased from $1,881.67 to $4,076.96. Debtor additionally reports a second job net income of $1,220.37 on 8h. The Trustee states the Debtor has not submitted recent pay stubs in support of the schedule.

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

The Debtor reports on line 4 a home mortgage expense of $1,082.00 versus $1,992.00 at the time of filing. The Debtor states in item 3 of their declaration the mortgage payment was reduced from $1,992.00 to $1,083.00. The Trustee assumes this is the result of a loan modification but cannot find court approval for any modification. Total expenses per the supplemental Schedule I are $4,600.00. Expenses adjusted at the time of filing for the decrease in mortgage payment are $3,800.00 ($4,710.00- $910.00 mortgage decrease). Thus, Trustee states the expenses other than the mortgage have increased $800.00. The Trustee notes $425.00 of this increase is in transportation and $155.00 is in auto repairs and maintenance.

DEBTOR'S AMENDED PLEADINGS

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

First, it appears that Debtor has entered into a loan modification without authorization from this court. Declaration, Dckt. 111. By virtue of the secret, undisclosed loan modification, it appears that the Debtor has had

$900.00 of additional disposable income for a number of months which must be properly accounted for in this case. Notwithstanding the other issues this raises regarding Debtor conduct, without approval of the loan modification on which the plan relies, the plan cannot be confirmed. A motion to approve the loan modification was filed on August 18, 2014. Dckt. 127.

Second, Debtor states on June 2012 they purchased a 2006 Toyota Corolla for $2,500, but did not obtain court approval prior to making the purchase. Declaration, Dckt. 111. Debtor has filed a Motion to Incur Debt on August 22, 2014. Again, the court cannot confirm a plan in which Debtor has purchased a vehicle without court approval and have acted without regard for the Bankruptcy Code. FN.5.

FN.5. This has been a very troubling, and troubled, case, relating to all of the attorneys who purport to have represented the Debtors, and who now purport to not representing the Debtors. How Debtor, represented by counsel, could have believed in good faith that no court approval for modifying loans outside of the plan and spending money to buy vehicles is one which will required clear, detailed explanations by not only the Debtor, but the various attorneys who have been or conceivably could seek to be paid for that representation.

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

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

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration on August 22, 2014. Dckt. 140. In the declaration, the Debtor states that on August 18, 2014, Debtor filed a Motion to Approve Loan Modification which is scheduled for hearing on September 9, 2014 at 3:00 p.m. Dckt. 127 - 31. The Debtor alleges that there was no court authorization for the loan modification because the Debtor did not provide the Loan Modification Agreement to their attorneys until Monday, August 11, 2014. The Debtor states that on August 22, 2014, the Debtor filed a Motion to Incur Unsecured Financing for the purchase of the 2006 Toyota Corolla which is scheduled to be heard on September 9, 2014. The Debtor notes that on August 11, 2014, the Debtor filed Supplemental Exhibits which included co-Debtor's most recent pay stubs to reflect that co-Debtor has been reduced to part-time employment with decreased wages. Dckt. 109.

The Supplemental Declaration also discusses the Chapter 13 Proposed

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

DISCUSSION

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

Here, Debtor's plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329. The Debtor's amended schedules do not provide for Debtor's second job. Debtor does not provide an explanation of where the $909.00 by which the Debtor has reduced their mortgage payment (without first getting court approval) has been allocated. Debtor's schedules do not reflect the $100.00 installment payments the Debtor alleges they paid to their daughter for the 2006 Toyota Corolla that they seek court permission to retroactively permit. Debtor does not provide an explanation for the significant drop in Debtor Ana Pannetta's significant drop in gross monthly income from $3,047.51 to $1,487.95.

Trustee's objection concerning the reduction in mortgage payments to only be balanced by increases in other expenses without explanation is troubling. The amended Schedule J reflects the reduction of the mortgage payment by $909.00 but then ends up having expenses that are $1,362 less than that originally listed in Schedule J at the time of filing. Clothing expenses went up $150.00 with no explanation for the increase. There was no career change by either party and there is no indication that there was some other event that would require a substantial increase in clothing costs. Vehicle insurance nearly doubled from the Original Schedule J to the Amended Schedule J. Debtor's Amended Schedule I no longer lists income from Debtor Scott Pannetta's second job as a security officer yet shows an increase in wages of over $2,400.00. There remains no indication on the supplemental rental income from Debtor's niece. The Debtor's blanket and conclusory statement of the changes do not sufficiently explain such discrepancies.

While the Debtor does attempt to give an excuse for the changes in expenses, the expenses filed by Debtor do not appear to be realistic or accurate. Rather than an accurate statement of expenses, this appears to be a fabrication to adjust the net monthly income to justify the plan terms (what this court has commonly called a "Liar Declaration").

This Third Amended Plan most certainly is not Debtor's best efforts and was knowing misrepresented to the court as such.

The court does note that on August 27, 2014, Debtor filed a supplemental declaration in connection with the pending motion to dismiss stating that they are currently working on a Third Modified Plan to submit to the court to review. Dckt. 143. In light of the conduct of the Debtors, the misappropriation of monies (diversion of the $909.00 a month mortgage payment reduction and voluntary diversion of monies into retirement accounts as payroll deductions), such further efforts may well be for naught in this case. The Debtors and their various attorneys have documented a pattern of malfeasance, misrepresentation, and diversion of monies which is not consistent with the good faith prosecution of a bankruptcy case by either the Debtor or their attorneys. FN.6.

FN.6. This case presents the court with a situation where the Debtor, and each of them, may actively have been working to misrepresent their fiances to the court so as to avoid paying creditors anything significant - while "getting all they court at everyone else's expense." Or it may be a situation where the Debtor, and each of them, chose to be ignorant, signing documents and providing testimony under penalty of perjury without regard to determining the truth of their statements – "because it lets me win and pay my creditors nothing." It may be a situation where the various attorneys for Debtor have concocted a series of misrepresentations and frauds to abuse the bankruptcy system, advising the Debtor, and each of them, to undertake these acts and provide testimony under penalty of perjury, advising them, "Just sign, I'm getting you what you want. Don't worry, I an attorney licensed to practice law. By doing this you win and I get paid." None of these scenarios are good for the attorney, and one is only marginally better for Debtor.

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

Further, the court refers this case to the Office of the U.S. Trustee for review and investigation, as that Office determines appropriate relating to the conduct of each of the debtors and their various attorneys in this bankruptcy case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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.
>
> **IT IS FURTHER ORDERED** that the Clerk of this Court

shall deliver a physical copy of this Order and the Civil Minutes from the September 9, 2014 hearing to the U.S. Trustee for Region 17, Attn: Antonia Darling, Esq., Sacramento Division. The court refers this case to the Office of the U.S. Trustee for its review, investigation, and action, to the extent that the U.S. Trustee deems appropriate concerning the conduct of each of the Debtors in this case and the various attorneys who have represented them in this case. The court does not order the U.S. Trustee to take any specific action or investigation.

2. 10-53003-E-13 SCOTT/ANA PANNETTA
HLG-5 Kristy A. Hernandez

MOTION TO APPROVE LOAN MODIFICATION
8-18-14 [127]

Tentative Ruling: The Motion to Approve Loan Modification 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, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Scott and Ana Pannetta ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,992.00 a month to $1,083.00 a month. The modification will capitalize all amounts and arrearage that were past due as of the effective date and provides for an interest rate of 4.00% over the next 480 months.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing. While the Debtor does not provide evidence of Debtor's ability to pay this claim on the modified terms, the $992.00 decrease in monthly mortgage payments is significant enough to raise an assumption that Debtor can afford the decrease amount.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure. FN. 1.

FN.1. The court takes note that the Debtor sought and executed the loan modification with Wells Fargo Home Mortgage prior to getting court approval. While the Debtor does not state in their declaration that they were unaware of the need to obtain court approval, the court emphasizes that Debtor must be certain to follow all rules and procedures required by the rules and Bankruptcy Code. Otherwise, the Debtor's bankruptcy may fail due to Debtor's inability to follow the required rules and procedures.

The Chapter 13 Trustee, David Cusick, filed a Non Opposition to the instant Motion to Approve the Loan Modification on August 25, 2014.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted. FN.2.

FN.2. Debtor and counsel have given the court no legal basis for granting such retroactive relief. Rather, they adopt an attitude of, "oops, we got caught having an extra $909 a month, so we better make it look like we're complying with the law." It makes little sense that attorneys who profess to practice bankruptcy law, who have accepted fees for providing bankruptcy services, and who have profited from representing debtors in bankruptcy cases, would not have told this Debtor, and each of them, of the basic post-petition requirements. However, the court recognizes that the Debtor, and each of them, may well have significant legal issues and consequences arising out of their respective conduct in this case. Heaping on the confusion of not approving a loan modification which reduces the financial burden on Debtor (as well as responsibility for the professional if such loan modification is lost due to conduct of such professional) would not benefit anyone in a Chapter 13 reorganization - be it in this case or a subsequently filed case which is prosecuted in good faith by Debtor, and each of them, and counsel in such case).

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

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

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

IT IS ORDERED that the court authorizes Scott and Ana Pannetta ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 609 Russell Street, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 130. Approval of the loan modification does not approve or authorize the receipt by Debtor, and each of them, of the reduced amount of the payment, the use of such monies, or diversion of such reduction from the Trustee for disbursement under the Chapter 13 Plan.

IT IS FURTHER ORDERED that the Clerk of this Court shall deliver a physical copy of this Order and the Civil Minutes from the September 9, 2014 hearing to the U.S. Trustee for Region 17, Attn: Antonia Darling, Esq., Sacramento Division. The court refers this case to the Office of the U.S. Trustee for its review, investigation, and action, to the extent that the U.S. Trustee deems appropriate concerning the conduct of each of the Debtors in this case and the various attorneys who have represented them in this case. The court does not order the U.S. Trustee to take any specific action or investigation.

3. 10-53003-E-13 SCOTT/ANA PANNETTA — MOTION TO INCUR DEBT
HLG-6 Kristy A. Hernandez — 8-22-14 [136]

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, parties requesting special notice, and Office of the United States Trustee on August 22, 2014. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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. At the hearing ----------.

The Motion to Incur Debt is denied without prejudice.

The motion seeks retroactive permission to purchase a 2006 Toyota Corolla, which the total purchase price is $2,500.00, with monthly payments of $100.00.

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).

When a debtor seeks retroactive authorization from the court, there are additional factors for the court to consider before granting such a request.

As a preliminary matter, the Debtor here is seeking a "retroactive authorization" rather than *nunc pro tunc* authorization. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of debtor's actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974-978 (9th Cir. 1995) (alternating between using *nunc pro tunc* and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate in order to carry out the Bankruptcy Code and the approval benefits the debtor's estate. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 522 (9th Cir. 2007). Retroactive approvals should only be used in those "exceptional circumstances." *Atkins v. Wain*, 69 F.3d 970, 974 (9th Cir. 1995). The Ninth Circuit, in *Harbin*, developed four factors that courts should use when determining whether the facts of the case rise to the level of "exceptional circumstances" to justify granting retroactive approval of post-petition financing obtained by the debtor. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 523 (9th Cir. 2007). The factors are:

1. whether the financing transaction benefits the bankruptcy estate;

2. whether the creditor has adequately explained its failure to seek prior authorization or otherwise established that it acted in good faith when it failed to seek prior authorization;

3. whether there is full compliance with the requirements of section 364(c)(2); and

4. whether the circumstances of the case present one of those rare situations in which retroactive authorization is appropriate.

Id. In *Harbin*, the court found that all four factors weighed in favor of retroactively granting the motion to incur debt. *Id.* First, the court found that the debtor's refinancing of his home benefitted the bankruptcy estate because it introduced the necessary cash to fund the debtor's reorganization plan. *Id.* Second, though the lender was negligent in overlooking the fact that the debtor was in bankruptcy, the court found that the lender still acted in

good faith when it made the refinancing transaction. *Id.* Third, the court found that the bankruptcy court complied with the requirements of 11 U.S.C. § 364(c)(2) when the debtor used the funds from the refinancing loan to pay off a lien on his residence and the lender's security interest was taken on property of the estate that was not otherwise subject to a lien after the requisite notice and hearing requirements were satisfied. *Id.* Finally, the equities favored this situation being one of the rare ones in which retroactive approval is appropriate. *Id.* at 524. The loan included competitive terms, was intended to fund the debtor's reorganization, and the transaction costs were returned to the estate by the debtor. *Id.* This all was enough to establish an "exceptional circumstance" that allows a court to authorize debtor actions to incur debt retroactively. *Id.*

Here, the Debtor does not provide any information necessary to justify the court in retroactively approving a loan for a 2006 Toyota Corolla from over two years ago. The Debtor has not met any of the additional four factors outlined by the Ninth Circuit in *Harbin*.

The Debtor does not give any evidence of value of a 2006 Toyota Corolla with a broken transmission. The Debtor only states that the value is $2,500.00 and contends that Debtor should be allowed to have paid that amount to Debtor's Daughter. Additionally, the Debtor does not provide any information concerning the cost of fixing the transmission. Between the $2,500.00 and the potentially high cost of fixing the transmission, the cost of the car may end up being unreasonably high.

Additionally, the Debtor's schedules do not seem to accurately reflect the Debtor's income and expenses. The Amended Schedule I does not provide for the income from Debtor Scott Pannetta's second job even though it is listed. The Debtor's expenses on the Amended Schedule J appears to have increased certain expenses to compensate for the $909.00 the Debtor had their mortgage reduced by prior to getting court permission. The Amended Schedule J does not provide for the $100.00 monthly installment payments to the Debtor's daughter that the instant motion states was the terms for purchasing the 2006 Toyota Corolla.

The Debtor does not address the reasonableness of incurring debt to purchase a broken 2006 Toyota Corolla. The Debtor does not provide any sort of purchase agreement stating the terms of the car purchase. The only information given to the court is through the motion and accompanying declaration. Without an actual agreement for the court to review to determine whether the terms are fair, the court is unable to find the terms reasonable.

Equally troubling, that Debtor, having secretly made the purchase of the vehicle around June 2012--over two years ago--without court approval and in direct violation of the confirmed plan, now comes to this court with this Motion, unsupported by sufficient evidence and asking the court to "just sign an order to validate what I chose to do – irrespective of the law." The Debtor was not authorized to incur the debt to make such a purchase. Debtor was not authorized to pay Debtor's daughter $2,400.00 for a 2006 car with a broken transmission.

Without any of the above information, the court cannot determine whether the financing transaction benefits the estate, whether the failure to seek

prior approval was in good faith or not, whether 11 U.S.C. § 364(c)(2) is properly complied with, nor whether the facts of this case are sufficient to justify retroactive approval. Under the Ninth Circuit precedent, the court cannot retroactively authorize the financing transaction.

The motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 denied without prejudice.
>
> **IT IS FURTHER ORDERED** that the Clerk of this Court shall deliver a physical copy of this Order and the Civil Minutes from the September 9, 2014 hearing to the U.S. Trustee for Region 17, Attn: Antonia Darling, Esq., Sacramento Division. The court refers this case to the Office of the U.S. Trustee for its review, investigation, and action, to the extent that the U.S. Trustee deems appropriate concerning the conduct of each of the Debtors in this case and the various attorneys who have represented them in this case. The court does not order the U.S. Trustee to take any specific action or investigation.

4. 10-25007-E-13 RPB-10 — JEFFERY/JUANITA SCHAFF — Raymond P. Burton — MOTION FOR COMPENSATION FOR RAYMOND P. BURTON, JR., DEBTOR'S ATTORNEY(S) 7-18-14 [132]

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 17, 2014. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted, with $2,275.00 in additional fees and $181.79 in additional costs allowed by the court, and all other requested relief denied.

Raymond Burton, the Attorney ("Applicant") for Jeffery and Juanita Schaff the Chapter 13 Debtors ("Client"), makes a Third Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period February 25, 2010 through July 15, 2014. Counsel was previously awarded $5,000.00 pursuant to the court's no-look fee guidelines. Dckt. 51 at 2.

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

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

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so

that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

NO-LOOK FEES

The pre-confirmation payment that counsel receives is viewed by the court as generally sufficient to fairly compensate counsel for all pre-confirmation and most post-confirmation services such as reviewing notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to claims filed.

Local Rule 2016-1 governs no-look fees in Chapter 13 cases and states in relevant part:

> (c) **Fixed Fees Approved in Connection with Plan Confirmation**. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> 1. The maximum fee that may be charged in $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> 2. The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> 3. If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subprt, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Bankr. E.D. Cal. R. 2016-1.

The United State Bankruptcy Court for the Eastern District of California issued the *Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases*, which states in relative part:

> 4. If counsel has filed an executed copy of the "Rights

> and Responsibilities of Chapter 13 Debtors and Their Attorneys," but the initial fee is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The court will not approve, however, additional compensation in cases in which no plan is confirmed, or for work necessary to confirm the initial plan. Further, counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. This fee is sufficient to fairly compensate counsel for all preconfirmation services and most post-confirmation services such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. . .

Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases.

RULING ON PRIOR MOTION

When denying Counsel's prior motion without prejudice, the court stated,

> **"DID NOT PROVIDE TASK BILLING ANALYSIS**
>
> In seeking the approval of fees, the court requires that applicant provide a task billing analysis in which the various activities, time charged , and fees by task area is provided. These can include Administrative Work (such as applications to employ, communicating with the Clerks office for procedure, and the organizational activities of counsel); motions for relief from the stay; motions for sale, use or lease of property, for
> obtaining credit, or abandoning property; preference and avoiding adversary proceedings, other adversary proceedings; plans, disclosure statements, and confirmation; and the like. Within each of the task areas a brief description is provided and the time and fees relating to those items. For the present Motion, applicant appears to have merely lumped substantially all of the work into a Case Overview and Description of Services Rendered heading.
>
> Exhibits A and B filed in support of the Motion are applicants raw time records, in which all of the activities are mixed together, leaving it for the court to mine the document to construct a task billing analysis. The court declines the opportunity, leaving it to applicant who intimately knows the work done and his billing system to correctly assemble the information.
>
> **EXPENSES**

> Counsel requests payment for various expenses, including photocopies and postage. Specifically, $79.45 is requested for post-confirmation photocopy expenses. Counsel has not specified how many photocopies or their individual cost in his motion or exhibit. Counsels declaration notes that photocopies are charged at $0.05 per page. Dckt. 119. Without this information readily apparent in the motion, the court refuses to award post-confirmation expenses for photocopies. Further, the court is hesitant to award expenses from pre-conformation work when the Debtors attorney did not previously itemize photocopy expenses pre-confirmation either.
>
> **NO-LOOK FEES**
>
> The pre-confirmation payment that counsel receives is viewed by the court as generally sufficient to fairly compensate counsel for all pre-conformation and most post-confirmation services such as reviewing notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to claims filed. See Guidelines for Payment of Attorneys Fees in Chapter 13 Cases. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Id. Based on Counsel motion, the court is not convinced that there was substantial and unanticipated post-confirmation work, or that counsel is entitled to payment beyond that which he already received from the Chapter 13 Trustee."

Civil Minutes, Dckt. 122.

DISCUSSION

The present Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief (for substantial and unanticipated legal services) is based.

A. Counsel requests $3,000.00 for legal fees for the period February 25, 20-10 to July 15, 2014.

B. This in addition to the $1,000.00 paid by the Debtor prior to the case and $4,000.00 approved by the court in the order confirming the plan (the set fee amount pursuant to the Local Bankruptcy Rules).

C. During the period of time covered by the Motion, Counsel provided services including,

   1. Services as required by the Bankruptcy Code to prosecute the case.

   2. Give legal advice to Debtor about powers and duties under the Bankruptcy Code.

3. Filing and Serving an opposition to a motion to dismiss the case filed by the Chapter 13 Trustee.

4. Filing and serving three motions to modify Chapter 13 Plan and the present motion for fees.

5. Preparation of documents as necessary for Debtor to carry out duties under the Bankruptcy Code.

Motion, Dckt. 132. As pleaded, Counsel merely states that he did work which is covered by the set $5,000.00 fee which he agreed to accept in this case. Local Bankruptcy Rule 2016(c)(1)-(3). Possibly the motions to modify may be outside the set fee services, but the Motion states no such grounds.

Counsel does not provide any task billing breakdown in his declaration for these services, but merely says he wants $3,000.00. Dckt. 134. He does state in his declaration, ¶ 5,

> "5. As set forth in the aforementioned Exhibit "B," [time records] significant time was devoted to services made necessary by substantial and unanticipated developments in this case. These developments made it necessary to analyze and, if appropriate, respond to three Post Confirmation Motions filed by the Trustee to Dismiss this case. It was also necessary to prepare three Modified Chapter 13 Plans and three Motions to Modify Chapter 13 Plans. In addition, it was necessary to file this Motion for the Allowance of Attorney's Fees and Costs."

Counsel's personal conclusion that the services were "substantial and unanticipated" is of little assistance to the court in making the necessary findings and drawing the necessary conclusions on that point.

Exhibit B is a billing statement for services, which is organized by date, not task. Dckt. 137. The period in which services were rendered are from March 30, 2011 through July 15, 2014. No effort is made to organize these services by task, or provide any evidence as to why they are substantial or necessary. For purposes of this Motion, and only this Motion, the court attempts to organize the information.

Second Modified Plan (March 2011).....$650.00

Trustee's Motion to Dismiss, Third Modified Plan, (November 2011).....$650.00

Fourth Modified Plan (December 2011).....$725.00

State Board of Equalization Claim (February 2012)...$125.00

Motion for Fees (February 2012).....$500.00

Trustee's Motion to Dismiss (April 2013).....$275.00

Trustee's Motion to Dismiss (July 2014).....$200.00

Motion for Fees (July 2014).....$No Charge

In considering the services provided, the prior motion for additional attorneys' fees was denied based on the failure of counsel to show that they were for "substantial and unanticipated legal services." Counsel requests $500.00 for such defective pleadings.

With respect to the Fourth Modified Chapter 13 Plan, the court confirmed the Plan. Order Confirming Plan, Dckt. 114. No hearing was required on that motion, no opposition having been provided. Civil Minutes, Dckt. 107. The reason given for the Fourth Modified Plan was to provide for a priority claim filed by the California Employment Development Department (though it is not explained why this was not provided for in the Second Modified Plan which was filed and confirmed after the claims deadline expired). While the court granted the motion, it is noted in the Civil Minutes that the declaration in support of confirmation provided by counsel failed to provide testimony of facts known by the declarants, but merely parroted legal conclusions and personal findings by the Debtors. The court provided counsel with notice that as of March 1, 2012, this court was deny motions which were supported by such "legal testimony" by witnesses. Notwithstanding that notice, counsel has continued with such "legal conclusion" testimony in his own declaration, opining for the court that his services were "substantial and unanticipated."

The Motion to confirm the Third Modified Plan was denied as moot, Debtor having filed a Fourth Modified Plan. Order, Dckt. 106; Civil Minutes, Dckt. 105. It appears that the work for the Fourth Modified Plan, and all the billing relating thereto, was necessitated due to the objection of the Chapter 13 Trustee to the proposed Third Modified Plan,

> " The trustee is uncertain of all terms of the proposed plan. Section 4.02 refers to an attached page, but no page is attached to the plan."

Opposition to Motion, Third Modified Plan, Dckt. 97.

For the Second Modified Plan, the court granted Debtor's motion and confirmed the Plan without hearing, no opposition having been filed. Order, Dckt. 78; Civil Minutes, Dckt. 76. This modification was necessitated because of the actual proofs of claims filed in this case. Motion, Dckt. 71.

Counsel's motion has not stated grounds by which the court may determine that there was substantial and unanticipated post-confirmation work for which counsel is entitled to additional attorneys' fees. Counsel does not provide any specifics or instances that would justify additional compensation outside the no-look fee. The mere fact that Counsel uses the words "substantial and unanticipated" post-confirmation work is not sufficient to justify nearly doubling Counsel's fees, especially given the fact that Counsel does not provide task billing to justify additional compensation.

The court would be well justified in denying this motion, with or without prejudice. Rather than clearly stating the grounds with particularity in the Motion and providing clear evidence in support thereof, Counsel has left it to the court to guess as to what testimony would be provided and to take the

time to assemble the facts (which the court would guess that Counsel would state if Counsel found it worth the time and effort to so state) which support granting all or part of the relief requested.

To deny the Motion with prejudice would result in Counsel not being allowed some additional fees which may well relate to substantial and unanticipated work. To deny the Motion without prejudice would most likely create substantial additional work for the court and Counsel's likely defective pleading and presentation of evidence yet again.

Therefore, based on the evidence presented, the court grants Counsel $2,275.00 in additional fees for substantial and unanticipated work. This is for work relating to the Second Modified Plan, November 2011 Motion to Dismiss, Fourth Modified Plan, State Board of Equalization, 2013 and 2014 Motions to Dismiss, and the 2014 Motion for Attorneys' Fees (though listed as "No Charge," the court allocates the $500.00 requested for the denied motion to the current Motion). The court does not allow duplicate attorneys' fees for preparing and filing the Motion and Third Modified Plan where were withdrawn by Debtors and counsel. While it is questionable as to why a Fourth Modified Plan was required for the State Board of Equalization claim which "appeared" after the Second Modified Plan was required to address the final claims filed after the claims bar date, the court gives Counsel the benefit of the doubt.

It appears, as the court infers from the prior pleadings in this case, that the Debtor's good faith projection of claims was slightly in error. Unfortunately, the confirmed plan was not drafted in a manner that such small miscalculations could be addressed without modifying the plan or by an *ex parte* modification with the concurrence of the Chapter 13 Trustee. To bring these multiple chapters of this case to a close, the court will infer that these claims were "unanticipated," with such modifications being "substantial" legal services.

Counsel requests $252.68 in additional costs – $79.45 for photocopies and $183.23 in postage expenses. Of these expenses $70.89 relates to the Motion and Third Modified Plan which were dropped by Debtors. The court disallows those postage and copy expenses. The court allows and authorizes to be paid through the Chapter 13 Plan $181.79 in additional costs and expenses for substantial and unanticipated legal services.

Any and all fees and costs, the set fee in this case (other than the $1,000.00 retainer paid pre-petition and already applied to the $5,000.00 set fee) and these additional fees, must be paid through the Chapter 13 plan. The court prohibits the payment by Debtors or any other person. For the Additional Fees approved pursuant to this motion, the Fees shall be amortized over the remaining months of the plan and paid in equal monthly payments, no interest authorized.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by

Raymond Burton ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion for Compensation is granted, with counsel allowed $2,275.00 in additional fees and $181.79 in additional costs (above the set fee previously approved in this case). All other requested fees and relief are denied.

IT IS FURTHER ORDERED that any and all fees and costs, the set fee in this case (other than the $1,000.00 retainer paid pre-petition and already applied to the $5,000.00 set fee) and these additional fees, must be paid through the Chapter 13 plan. The court prohibits the payment by Debtors or any other person. For the Additional Fees approved pursuant to this motion, the Fees shall be amortized over the remaining months of the plan and paid in equal monthly payments, no interest

5. 14-22409-E-13 ROBERT/MARY LYTLE MOTION TO INCUR DEBT
LBG-5 Lucas B. Garcia 7-9-14 [62]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

Robert and Mary Lytle ("Debtor") file the instant motion seeking permission to purchase a 2011 Honda CRV, which the total purchase price is $23,486.86, with monthly payments of $499.08.

FIRST MOTION TO INCUR DEBT

This is Debtor's second attempt at a Motion to Incur Debt for the same 2011 Honda CRV on the same terms with the same lender. The first Motion to Incur Debt was filed on May 27, 2014. Dckt. 41. David Cusick, Chapter 13 Trustee, ("Trustee") filed opposition to the first motion citing multiple deficiencies with the motion including the fact it does not appear to be Debtor's best efforts. Dckt. 48.

The court denied the First Motion to Incur Debt citing a number of deficiencies from failure to provide the post-petition credit terms to the failure of the Debtor to address the reasonableness. Dckt. 53.

SECOND MOTION TO INCUR DEBT

Unfortunately, the Debtor has submitted a near identical Second Motion to Incur Debt, making minimal changes.

The Trustee filed an opposition to the instant motion, highlighting the total of three changes Debtor made to the motion as well as pointing out that none of the prior issues highlighted by the court in the denial of the First Motion to Incur Debt. Dckt. 70.

DISCUSSION

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).

Here, the Debtor yet again does not address the reasonableness of incurring debt to purchase a used 2011 Honda CRV while seeking the extraordinary relief under Chapter 13 to discharge debts. The proposed transaction is not in the reasonable interest of the Debtor in this Chapter 13 case. The loan calls for a substantial interest charge — 14.95%.

On this latter point, burdening Debtor with a 14.95% interest rate appears to be a clear statement by this lender that it has determined that Debtor is unable to pay this money back and it will have to repossess the car. Therefore, it must extract as much interest as it can while the Debtor struggles to make the payments, then repossess the car, sell it for a wholesale auction price, pile on 14.95% interest in a post-petition default, and then obtain a judgment and compound the 14.95% interest at 10% under a California judgment until it can suck the last financial marrow from Debtor's financial bones.

Debtor has not provided the court with a copy of the credit agreement, but just summarize the terms in the declaration. The court does not know if the interest rate is limited to 14.94%, or if it is adjusted higher in months which have vowels in their names, or an additional fee is paid if the monthly payment date falls on a weekend, holiday, or day of the week with the word "day" in its name.

The term for this credit, as stated by Debtor in the declaration is that it is for 72 months. Even though this is a six year car loan, five of the payment years are during this Chapter 13 case. For a lender who had a good faith belief in a debtor's ability to pay (and therefore would provide the loan at a reasonable interest rate), such creditor is doubly protected as the debtor is in the safe cocoon of bankruptcy and the automatic say (or from a creditor's perspective the "bankruptcy straightjacket") for the first five years of payments. Based on the current finances of Debtor, as stated by Debtor under

penalty of perjury, there is little risk to the lender providing this financing.

The Motion states with particularity (Fed. R. Bankr. P. 9013) that,

A. Debtors are current in their plan payments;

B. Debtors seek court authorization to obtain post-petition credit to purchase a 2011 Honda CRV or similar vehicle;

C. The Debtors intend to borrow $23,486.86 from Consumer Portfolio Services, Inc. to purchase a vehicle;

D. Debtors have been informed that court approval is required for them to incur post-petition debt;

E. The monthly payment to Consumer Portfolio Services, Inc. will be $499.08 a month, and Debtors have filed Updated Schedules I and J to demonstrate that they have the ability to pay this additional amount.

Motion, Dckt. 62. No copy of the post-petition credit agreement has been provided to the court. The terms and conditions of such post-petition credit has not been disclosed to the court, Chapter 13 Trustee, U.S. Trustee, Creditors, and other parties in interest.

Excluded from the Motion and buried in the declaration are the terms of the post-petition credit. For the 2011 vehicle the Debtors will,

A. Incur $23,486.86 in debt;

B. To purchase an unidentified vehicle of unstated value;

C. For which they will pay 14.95% interest;

D. For a 72 month term (at the end of which a 2011 vehicle will be 11 model years old); and

E. Will make monthly payments of $499.08.

Declaration, Dckt. 64. The Declaration provides no information as to the necessity of purchasing the 2011 vehicle for an unknown price, other than saying that Debtor needs to attend doctor's appointments and the Co-Debtor works out of town five days a week – the same reasoning given in the First Motion to Incur Debt that was denied. A side by side comparison of the First and Second Motion to Incur Debt are nearly identical.

The Declaration also states that the Debtors believe that a 14.95% interest rate "are the best we could achieve," but the declaration is bereft of any testimony about where they sought credit, the terms they were quoted by lenders, and possible sources of post-petition credit. The same deficiency was in the First Motion to Incur Debt.

The proposed Amended Chapter 13 Plan in this case (Dckt. 26) requires the

Debtors to make $382.00 a month payments for sixty months. This includes a Class 2 payment to Capital One Auto Finance of $209.16 a month for a 2008 Honda Accord with 91,000 miles (stated to be in good condition).

Schedule B discloses that the Debtor owns two vehicles, a 2008 Honda Accord and a 2007 Toyota Tundra (61,000 miles, stated to be in good condition). Dckt. 1 at 15. Schedule D lists two secured claims, a $29,093 claim secured by the Tundra (which is listed as having a value of $18,445) and an $11,357.00 claim secured by the 2008 Honda Accord (which is listed as having a value of $10,648.00). *Id.* at 18.

On Schedule I the Debtor lists having $6,362.20 a month in gross income. This consists of $3,737.50 in net income from business for the Co-Debtor and $2,624.70 in Social Security income. *Id.* at 27. The Debtor has no dependants listed on Schedule J. On the Original Schedule J the Debtors list $6,007.00 in necessary monthly expenses. *Id.* at 28-29. No car payments are provided for in the Schedule J budget. However, the Debtor does attach to the Second Motion to Incur Debt an "updated" Schedule J as an exhibit, which remains unfiled as an amendment. Dckt. 65. In this unfiled Schedule J, the Debtor adds the $499.08 car payment for the 2011 Honda CRV Debtor is seeking approval to obtain in the instant motion. Upon the court reviewing the Amended Schedule J and the "updated" Schedule J attached as an exhibit to the Second Motion to Incur Debt are identical. Compare Dckt. 40 with Dckt. 65.

Though the Debtor states that they have significant monthly income from a business, they fail to provide a statement of the expenses relating to that income. The court has no way of identifying what reasonable (or unreasonable) expenses are deducted from the gross income to generate the net number.

The Original Chapter 13 Plan provided to pay the grossly undersecured claim of Santander Consumer USA, for which the 2007 Toyota Tundra as collateral, as a Class 4 Claim payment of $538.79 directly by the Debtors. Based on the financial information provided under penalty of perjury on Schedule J (Dckt. 1), the Debtors clearly did not have the monies to make the proposed Class 4 payment.

Though this case was filed only on March 10, 2014, the Debtor has amended the financial information provided on Schedule J under penalty of perjury two time since then. The First Amended Schedule J was filed on April 25, 2014. Dckt. 25. The First Amended Schedule J reduces the monthly expenses to $5,972.79. This yields a monthly net income of $389.41. A car payment of $535.79 has been added to the expenses – which is the amount of the Class 4 payment to be made for the grossly undersecured claim secured by the Toyota Tundra.

In Debtor's Amended Schedule J which is an exact copy of the "updated" Schedule J Debtor attached as an exhibit to the Second Motion to Incur Debt, Debtor substitutes in the $499.08 "anticipated" car payment, reduces food expense from $300.00 to $210.00 citing cutting expenses, and reduced medical expenses from $2,400.00 to 2,100.00 citing a typographical error for the reduction. Dckt. 65. This brings the monthly net income to $426.12. Again, this "updated" Schedule J has not been filed as an amendment to Debtor's petition.

To manufacture money to pay this vehicle payment but still maintain the monthly net income number, the Debtor decreases their "necessary medical and dental expenses" by $300.00 a month, Food and House Keeping Supplies by $90.00 a month, and Transportation by $125.00 a month. For the Food and House Keeping Supplies, the original budget amount was $325.00 a month, which strikes the court as being unreasonably low. The Debtor now states under penalty in perjury in the First Amended Schedule J that this expense is "really" only $200.00 a month. This changing of testimony and unreasonably low amount for two adults is not credible.

The Debtor also decreased their transportation expense from $300.00 a month to $200.00 a month. This is an unreasonably low expense for two vehicles.

On May 27, 2014, the Debtors again changed their expense information being stated under penalty of perjury with a Second Amended Schedule J. Dckt. 40. The Debtors now state under penalty of perjury that their expenses are only $5,936.08 a month. The vehicle payment provided on Second Amended Schedule J is $499.00 (again, the same "updated" Schedule J Debtor claims to remain unfiled in the Second Motion to Incur Debt).

The Amended Chapter 13 Plan which is set for a confirmation hearing on September 9, 2014, provides for a $209.16 a month Class 2 payment for the claim secured by the Honda Accord and a $535.79 a month Class 4 payment for the 2007 Toyota Tundra. Now the Debtor wants to add a $499.00 payment for a third car.

The court does not know what to believe from the various statements under penalty of perjury by the Debtor. The actual information concerning their business is hidden from the court, with none of the expenses disclosed. The Debtor seeks to pay the grossly undersecured claim of the Toyota Tundra in full as a Class 4 claim. The Debtors have unreasonably and unrealistically stated expenses. The only conclusion which can be drawn from the evidence presented is that Schedules I and J are not accurate, truthful statements of Income and Expenses, but only fabrications to produce a result by which the Debtors avoid paying the amounts required under the Bankruptcy Code.

The fact that the Debtor is represented by counsel who regularly appears in bankruptcy court makes the situation even more problematic – both for the Debtors and counsel. Debtor and Debtor's attorney have decided to completely disregard the order on the First Motion to Incur Debt which laid out in full detail all of the faults with the motion and Debtor's schedules. Instead, Debtor and Debtor's found it appropriate to refile an IDENTICAL Motion to Incur Debt, regurgitating the same information that was insufficient in the First Motion to Incur Debt, wasting this court's time and the Trustee's time.

Therefore, the motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 denied without prejudice.

6. 14-22409-E-13 LBG-4 ROBERT/MARY LYTLE Lucas B. Garcia MOTION TO CONFIRM PLAN 7-9-14 [57]

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 July 9, 2014. By the court's calculation, 62 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.

Robert and Mary Lytle ("Debtor") filed the instant Motion to Confirm First Amended Chapter 13 Plan on July 9, 2014.

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

The Chapter 13 Trustee opposes the motion on the basis that the plan

is not the Debtor's best effort. The Debtor is under the median income and proposes plan payments of $382.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor filed his original Schedule J on March 10, 2014, which failed to reflect an expense of $535.79 for the Debtor's 2007 Toyota Tundra listed in Class 4 of the Plan. Trustee states the Debtor filed an amended Schedule J on April 25, 2014, decreased the following expenses to account for the $535.79 auto payment:

	Original	Amended	Difference
Food Expense	$300	$210	($90)
Medical	$2,400	$2,100	($300)
Transportation	$325	$200	($125)
Entertainment	$100	$50	($50)

The Debtor filed a second amended Schedule J on May 27,2014, in which the only change made was to the auto payment, which was originally $535.79 and now the payment has changed to $499.08, with hopes that the Second Motion to Incur Debt would be granted. The Debtor's monthly projected disposable income totals $426.12 and the Debtor is proposing plan payments of $382.00 with a 0% dividend to unsecured creditors. Debtor failing to provide credible evidence to support these changing numbers, leading the Trustee to oppose confirmation. The Debtor previously stated under penalty of perjury that the expenses were higher and has not explained whether the prior testimony was mistaken or false, or whether events have occurred that have changed the expenses for the foreseeable future.

Once again, this motion is nearly identical to the first motion to confirm filed on April 28, 2014. Dckt. 27. Once again, like Debtor's Second Motion to Incur Debt (Dckt. 32), Debtor and Debtor's attorney do not correct any of the mistakes the Trustee and the court pointed out during the first go around to confirm.

While the Debtor does attempt to give justification for the changes in expenses, the expenses filed by Debtors do not appear to be realistic or accurate. Rather than an accurate statement of expenses, this appears to be a fabrication to support the payments under the plan for the vehicle payment (what this court has commonly called a "Liar Declaration").

Therefore, the motion is denied.

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.

7. 14-20512-E-13 VIRAB/EVA ABRAMYAN
PGM-2

MOTION TO CONFIRM PLAN
7-17-14 [46]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is denied

Virab and Eva Abramyan ("Debtors") filed a Motion to Confirm Debtors' Second Amended Plan on July 17, 201411 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

MOTION

The Debtors seek confirmation of their Second Amended Plan. This plan calls for monthly payments of $210.00 for 31 months. This provides a 1.5% repayment to general unsecured creditors. Debtors allege that the proposed plan complies with 11 U.S.C. §§ 1325(a), 1329(a), 1322(b), and 1323(c) and that they have proposed the plan in good faith.

TRUSTEE'S OPPOSITION

The Trustee has filed opposition to this motion. The Trustee alleges that the Debtors have not provided sufficient information about 4201 California Avenue, Carmichael, California ("Property") for its value to be known. The Trustee states that the information about the Property that Debtors have provided is in conflict and that the Trustee's own investigation into the value of the Property yielded a much higher value than the Debtors listed in their schedules. This may prevent the plan from meeting the Chapter 7 Liquidation analysis in 11 U.S.C. § 1325(a)(4).

The Trustee also alleges that Debtors have not supported their position that the second deed of trust with Bank of America, N.A. has been paid in full, but the lien not yet released.

The Trustee also takes issue with Debtors' listing of their first deed of trust with Bank of America, N.A. as a Class 4 claim when the Debtors are in arrears on their payments. Claim 16.

DEBTOR'S RESPONSE

Debtors filed a response to the Trustee's opposition. Debtors argue that the plan meets liquidation and state that the Property consists of a four-bedroom, four-bathroom, 4,093 sq. ft. home. Debtors also correct their schedules, stating that the value of the Property was intended to be $320,000.00.

In response to Trustee's contention that Bank of America's second deed of trust may not be paid in full, Debtors request 30 days to continue their efforts to contact the bank regarding a release of the lien.

Debtors argue that Bank of America's first deed of trust should remain a Class 4 claim because the Debtors are not late on their payments. Debtors state that the Bank believes they have an escrow shortage.

DISCUSSION

The court begins with the first grounds for opposing confirmation – value of the real property. The Trustee states that on Schedule A, under penalty of perjury, the Debtors state that the 4201 California Property has a value of $225,000.00. However, on Schedule D the Debtors list this same property to have a value of $320,000.00 as collateral for Bank of America, N.A. on its secured claims. The Trustee reports that his investigation of the Assessor's records discloses that this property has been assessed to have a value of $487,425.00. Therefore, the Property has been grossly undervalued by Debtors and the value of the Property is not correctly provided for in the

Plan.

Debtors respond to this Opposition with argument of their counsel – providing no declarations or evidence to support such arguments. Dckt. 56. Debtor's counsel ***argues*** that the "property" at issue was purchased by the Debtors for $225,000.00 in 2007 and then "built" in 2010. From this ***argument*** (which the court could construe being made from hole cloth as there is no evidence as to these asserted ***facts***) is that,

A. In 2007 the Debtors bought the "dirt" for $225,000.00

B. In 2010 the Debtors constructed a 4,093 square foot home on the property. (The square footage is another ***fact*** argued by counsel in the Response.)

From various appraisals presented to this court relating to valuations of other properties in this part of Sacramento, it would not be unfair to estimate a $85.00 a square foot construction cost (on the cheap side) for the improvement fo the "dirt." 4,093 square feet x $85 a square foot = $347,905 just for the construction cost.

A valuation for this improved property of $572,905 would not seem unfair. Such a value does not take into account the substantial increase in residential property values in the Sacramento Area since 2010. 511,625

Counsel for the Debtors argues (and for which Debtors have failed or refused to provide any testimony under penalty of perjury) that typing in $225,000.00 on Schedule A rather than the now alleged (without any evidentiary basis or logic) the asserted $320,000 value was merely a "scrivener's error." What counsel does not argue, and Debtors refuse or fail to provide any testimony, is how that they (assuming they actually, truthfully believe) could sign the Schedules under penalty of perjury after their review with such an obvious error.

Based upon the arguments presented and the lack of any testimony by the Debtors, the court is not convinced that this was mere error. The court is also not convinced that Debtor have provided information in their Schedules truthfully, honestly and accurately. Nor have they honestly, accurately, truthfully, and in good faith proposed and presented the Plan that is now before this court. FN.1.

FN.1. This conduct by counsel and the Debtors has the stench of a game being played, in which the Debtors have tried to sneak past the court, U.S. Trustee, Chapter 13 Trustee, and creditors valuable assets by making affirmative misrepresentations under penalty of perjury and "disguised facts" which the Debtors have their court argue, but for which these Debtors are unwilling to provide any testimony under penalty of perjury.

The Trustee next objects that the Debtors have amended Schedule D to list a second deed of trust for Bank of America, N.A. It is indicated on Amended Schedule D that the debt secured by the second deed of trust has been "forgiven," but the deed of trust has not been reconveyed. The Trustee objects that the Plan, as proposed, does not address this "claim" and lien now listed

on Amended Schedule D.

Additionally, the Trustee notes that there is no certificate of service showing that Amended Schedule D, which now lists another claim for Bank of America, N.A. was served on the Bank.

In response to this Opposition, the Debtors merely state that now the hearing on their Motion should be continued so that they can contact the Bank about this Second Deed of Trust. This bankruptcy case was filed January 2014. Now eight months later Debtors are getting around to contacting a creditor about a deed of trust which they now assert should not exist. They only request this continuance because the Trustee has objected. Once again, acting only because the Trustee objects takes on the same air of Debtors and counsel who are actively working to sneak things by the court and all other parties in interest – not prosecute a Chapter 13 case in good faith.

Finally, the Trustee objects based on the Bank of America, N.A. Proof of Claim No. 16 for the claim secured by the first deed of trust on the Property asserts a pre-petition arrearage of $3,572.44.

Only argument advanced by counsel for Debtors is that,

> "Debtors request this claim remain a class 4 claim as the debtors are not late on any payment due under the contract."

This cryptic, non-response to an opposition based upon (1) there being an arrearage and (2) a secured claim with an arrearage being required under the Eastern District of California Chapter 13 Plan to be a Class 1 Claim, again smacks of counsel and Debtors who are not prosecuting this Plan, and most likely this case, in good faith.

If the court takes the statements of counsel as true (Fed. R. Bankr. P. 9011), then there is no such arrearage owing on the claim. But counsel carefully, and vaguely states that "debtors are not late on any payment due under the contract." If the Debtors are not "late" (which cryptically could be said to be in "default") on any payment, then how could the creditor state that there is an arrearage (an unpaid amount due on the contract).

It appears that the Debtors and counsel have worked to actively misrepresent the status of this claim. Bank of America, N.A. Proof of Claim No. 16 states under penalty of perjury that there is a $3,572.44 pre-petition escrow arrearage. Debtors and counsel just ignore this - stating that "this is not the debt you should consider, let the Plan pass." The Debtors and counsel do not get to personally disallow a claim, have counsel just argue a claim away, or rewrite the Bankruptcy Code to a way that is more financially advantageous.

The Proposed Chapter 13 Plan fails to comply with the requirements of 11 U.S.C. §§ 1322 and 1325, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that the hearing on the Motion to Confirm Seconded Amended Plan is denied.

8.	**14-27114-E-13** **DPC-1**	**SHAUN/AMANDA STAUDINGER** **Scott J. Sagaria**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **8-13-14 [22]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor 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 Objection having been based on the pending motion to value a secured claim, and the court having granted that motion by final ruling, the court has determined that oral argument will not be of assistance in ruling on this Objection.

The court's decision is to overrule the Objection.

David Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan relies on a pending Motion to Value Collateral of HSBC Bank, USA. Dckt. 18. However, the court granted the Motion to Value Collateral of HSBC Bank, USA, which resolves the Trustee's objection.

The Objection to Confirmation is overruled.

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

IT IS ORDERED that the Objection is overruled. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

9. 14-27114-E-13 SJS-1 — SHAUN/AMANDA STAUDINGER — Scott J. Sagaria — MOTION TO VALUE COLLATERAL OF HSBC BANK USA, NA — 8-7-14 [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 Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 33 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 HSBC Bank USA, dba HFC Bank, N.A. is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Shaun and Amanda Staudinger ("Debtors") to value the secured claim of HSBC Bank USA, N.A. dba HFC Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3254 Nordyke Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $204,032.00 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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $211,193.00. Creditor's second deed of trust secures a claim with a balance of approximately $40,676.00. 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 Shaun and

Amanda Staudinger ("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 HSBC Bank USA, N.A. dba HFC Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 3254 Nordyke Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $204,032.00 and is encumbered by senior liens securing claims in the amount of $211,193.00, which exceed the value of the Property which is subject to Creditor's lien.

10. 14-27015-E-13 MARY BURKE
DPC-1 Peter G. Macaluso

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, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, ("Trustee") opposes confirmation of the Plan on the basis that it is unclear whether Mary Burke ("Debtor") can make the payments under the plan under 11 U.S.C. § 1325(a)(6). Trustee states that the Debtor lists $41.00 on Schedule J, line #7 as Debtor's food and housekeeping supplies expense which appears extraordinarily low for one person. Dckt. 1, pg. 31. Furthermore, Trustee notes that the Debtor, at the First Meeting of Creditors held on August 7, 2014, admitted that the expenses listed for the newspaper route she covers have been reduced due to a change in newspaper routes. Additionally, Trustee highlights that the Debtor appears to

show income of $400.00 rent from her son, but has never received any rent payments in the last two years or year to date and has no declaration supporting this rental income. Dckt. 1.

Debtor responded by filing an Amended Schedule J on August 15, 2014. Dckt. 20. Debtor filed a response stating that an Amended Schedule J was filed and that the amendment reflects that the Debtor is able to make the payments required under the proposed plan. Dckt. 21.

The "Response" was limited to Debtor's counsel making arguments. Debtor has carefully avoided presenting any testimony under penalty of perjury (in the form of a simple declaration) addressing these changes or defects in the Plan she is proposing. It is very significant when a party fails (or strategically chooses) to provide testimony under penalty of perjury in these circumstances – instead electing to wind up there attorney to argue "facts" and then have "plausible deniability." FN.1.

FN.1. One definition for the term plausible deniability is,

"A condition in which a subject can safely and believably deny knowledge of any particular truth that may exist because the subject is deliberately made unaware of said truth so as to benefit or shield the subject from any responsibility associated through the knowledge of such truth."

Example Provided: "The CIA black ops division undertakes dangerous and usually what would be considered illegal missions that are not officially sanctioned by the US administration so that the administration, which usually benefits from such missions, can safely disavow any knowledge of them in the event of their publically uncovered success or failure. The administration is in the position of plausible deniability towards the CIA's actions."

The Urban Dictionary, http://www.urbandictionary.com/define.php?term=plausible%20deniability.

Debtor does not address the missing rental payments from Debtor's son listed on Schedule I but not accounted for in Statement of Financial Affairs, the sudden increase on food and housekeeping supplies expense from $41.00 to $391.00, nor the changes in expenses from the change in newspaper routes. Because the Debtor does not provide for clarification or explanation for Trustee's objection, the court will sustain the Trustee's objection.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a)(6). 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 David Cusick, 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.

11. 14-26217-E-13 JEFFERY/MANDY PATTERSON — MOTION TO CONFIRM PLAN
CA-3 Michael David Croddy — 7-22-14 [21]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, 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). 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.

Jeffery and Mandy Patterson ("Debtor") filed a Motion to Confirm Debtors' First Amended Chapter 13 Plan on July 22, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

MOTION

Debtor seeks confirmation of their First Amended Chapter 13 Plan. This proposed plan provides for monthly payments of $909.00 over a 60-month period. General unsecured creditors will receive 22% repayment of their claims. Debtors

intend to clarify issues surrounding their rental property, income from the rental property, and child care expenses. The proposed plan also addresses changes in the Debtor's tax withholdings in paychecks. The Debtor alleges that they are current on all fees and charges in the case and that they have proposed the plan in good faith.

TRUSTEE'S OPPOSITION

The Trustee has filed opposition to this motion. The Trustee alleges that the Debtor has not used best efforts in their plan by failing to include all of Debtor's projected disposable income. 11 U.S.C. § 1325(b). Trustee argues that the Debtor is over median income, paying $909.00 per month for 60 months with a 22% guaranteed dividend to general unsecured claims, where the plan estimates total unsecured claim at $103,135.37, so the plan proposes to pay approximately an average of $378.15 per month to unsecured.

The Trustee also states that the increased monthly payment should increase the dividend to general unsecured creditors, though the percentage repayment stated in the plan has not changed from the Debtors' prior plan.

The Trustee also objects to the increase in Debtors' child care expenses. The Trustee alleges that the increased expense is not supported by evidence or receipts and that the expense exceeds the maximum amount allowed per child under I.R.S. guidelines. The Trustee also argues that Debtors have failed to account for decreasing care costs as the four-year-old children will soon enter school and will no longer need full-time daycare. The Trustee believes Debtors' plan payments should increase over time as this expense decreases.

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S OPPOSITION

Sacramento Municipal Utility District ("SMUD"), a creditor with a secured claim, also filed opposition to this motion. SMUD alleges that the proposed plan violates 11 U.S.C. § 1325(a) because it decreases interest rates such that the plan payments would be less than the allowed claim amount. SMUD argues that the plan provides for an interest rate of 4.25%, which is based on an insufficient risk factor for the amount of risk Debtors present. Debtors' rental property does not appear to be generating profits, which increases their financial risk. Additionally, Debtors' plan decreases SMUD's monthly payment and extends the life of the repayment, which also adds risk.

In stating that there is an insufficient risk factor adjustment SMUD cites the following:

A. a 1% adjustment is not sufficient.

B. In any bankruptcy case there is a risk of default.

C. SMUD's collateral is in rental property in which the monthly rental income is equal to jsut the monthly debt service. There is no income to pay for the regular maintenance for the rental property.

D. The proposed plan payments decrease the monthly payment from

$142.69 a month to $110.00 (reamortizing it over the life of the plan).

E. SMUD proposed increasing the interest rate to 5.00%, an increase of 0.75% from the 4.25% proposed by Debtor.

Opposition, Dckt. 59. In the Opposition, SMUD neglects to specifically identify its collateral and the risk that relates to its collateral. SMUD asserting a purchase money security interest fixture filing, which makes the deed of trust on the property junior to SMUD's lien. The priority of SMUD's lien and the junior liens whose interests are junior to the SMUD lien are very relevant and important to determine the true risk for SMUD's interest. SMUD apparently does not consider that in making this argument to the court.

Neither of the two declarations filed in opposition to the Motion provide testimony as to the actual risk to SMUD under the Plan. The court has used the Microsoft Excel Spreadsheet program, the court has computed the absolute value dollar difference in SMUD asserting that there is an additional 0.75% risk adjustment that is necessary. The claim secured by the senior fixture filing is 5,892.67. The court computes, using the Excel Spreadsheet program:

A. With a 4.25% interest rate over sixty months, the total payments are $6,551.31.

B. With a 5.00% interest rate over sixty months, the total payments are $6,672.12.

Thus, it appears that the substantial risk which SMUD asserts is a basis for denying confirmation of this plan is "worth" $120.81. In seeking this $120.81 of "necessary risk adjustment," is appears that after legal fees and expenses SMUD has increased its risk, as the court cannot envision how SMUD's legal expenses and internal employee costs are less than $120.81. FN.2.

FN.2. If this Creditor was not represented by well know counsel who over the decades has developed a reputation for honestly and proper litigation, a judge might infer that the present Objection was filed at the direction of Creditor to harass Debtor, mislead the court, and improperly impede the prosecution of a bankruptcy case. The court does not so infer in this case.

DEBTOR'S RESPONSE TO SACRAMENTO MUNICIPAL UTILITY DISTRICT'S OPPOSITION

Debtor has filed a response to SMUD's opposition. Debtor argues that the plan will fully repay SMUD's claim as a Class 2 claim and that the 4.25% interest rate is fair, even considering risks. Citing *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), Debtor argues that the 1% increase from the prime rate of 3.25%, as reported by BankRate.com, satisfies 11 U.S.C. § 1325(a)(B)(ii). Debtor state that because SMUD's claim is secured by real property, there is less risk and a 4.25% interest rate is sufficient.

DEBTOR'S RESPONSE TO TRUSTEE'S OPPOSITION

Debtor's attorney, on behalf of the Debtor, filed a response to the

Trustee's objection, arguing that the mistakes on the Debtor's schedule was due to Debtor's attorney improperly filling out the New Schedules I and J. The majority of the response is spent by Debtor's attorney explaining the difficulty he has had with the new Schedule I and J.

As to the objections brought by the Trustee, Debtor's attorney argues that the amended Schedules I and J now provide the correct withholdings for Joint Debtor, the correct income and expenses, and the proper childcare expenses. Additionally, the Debtor's attorney alleges that he has provided the Trustee with the necessary documentation to show the childcare expenses outside the record due to the children's age. Lastly, Debtor's attorney argues that Trustee's classification of expenses of going down as children grow up is incorrect. Debtor's attorney instead argues that because of additional food, clothing, educational expenses, and afternoon care, the expenses for children actually goes up as the children get older.

Debtor's attorney concludes by stating that the Debtor has "corrected mistakes and updated information and upon further investigation agree with the trustee that the Debtors are receiving a discount on their first child in daycare to the tune of $22.70/wk or 98.29/mo and request that the plan payment be increased from the proposed $909.00/mo to $1,007.00/mo for 60 months.

DISCUSSION

Here, Debtor admits that the plan is no longer a reflection of the true income and expenses of the Debtor. The Debtor in their response to Trustee's objection admits to such. To fix this inaccuracy, the Debtor now state different financial information and propose to increase the plan payments.

While arguing (through the attorney's Response to the Objection) that it was the attorney's fault, Debtor fails to provide any testimony under penalty of perjury (in a simple declaration) explaining how they signed, and stated under penalty of perjury the inaccurate and untruthful information in the Original Schedules.

Thus, the court has no basis to believe that the contentions by Debtor, and any statements under penalty of perjury in the Amended Schedules are true, accurate, and correct. Debtor's truthful explanation is that they didn't bother to read the Original Schedules because trust their attorney, and better yet, by signing it they got the financial outcome they wanted (irrespective of whether it was legally proper under the Bankruptcy Code). If so, then there is little reason for the court to believe that they read, understood, and believed that the information on the Amended Schedules is accurate. FN.1.

FN.1. Merely because Debtor is represented by a well known, highly respected consumer attorney is not an excuse for them signing and having submitted inaccurate information under penalty of perjury. Debtor is ultimately responsible for the testimony and statements they provided, or now, have failed to provide.

The court overrules SMUD's objection, determining that the 4.25% interest rate, based on the legal authorities presented by both Debtor and SMUD is proper.

The court sustains the Trustee's objection. Debtor has not provide the court with evidence relating to the changes in financial information under penalty of perjury by Debtor. Merely sending an attorney out to argue "facts," for which no evidence is presented, is not sufficient.

The proposed Chapter 13 Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm 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.

12. 14-27117-E-13 ANTHONY/GWENDOLYN LAND — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
DPC-1 Scott J. Sagaria — 8-13-14 [16]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor 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. At the hearing ----------.

The Objection is overruled as moot and confirmation is denied.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on August 25, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, Debtor having filed an amended plan which is to be presented to the court at a later date, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

13. 14-26919-E-13 RODERICK ROBBINS
DPC-1 Stephen N. Murphy

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-25-14 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, Chapter 13 Trustee, ("Trustee")opposes confirmation of the Plan.

TRUSTEE'S OBJECTION TO CONFIRMATION

On August 6, 2014, Trustee filed an objection to confirmation. The Trustee opposes confirmation of the Plan on the basis that:

1. The Trustee is uncertain if Debtor's plan is the Debtor's best effort, 11 U.S.C. § 1325(b). According to the Form B22C, the Statement of Current Monthly Income, Line 4b, the Debtor lists ordinary and necessary rental expenses of $1,064.35. Debtor is over median income. Debtor has failed to properly complete that Statement as required by 11 U.S.C. § 1325(b)(1)(B).

2. The Trustee is unable to determine whether Debtor has properly reported all income and expenses. Debtor lists on Schedule I, income from rents of $1,685.65 but fails to attach a breakdown of the income and expenses relating to the rental property. The form states on line 8a, list net income from rental property and attach a statement for each property showing gross receipts, ordinary and necessary expenses and the total net income. Debtor is also deducting $613.03 for rental mortgage expense on Schedule J. At the 341 Meeting held on July 31, 2014, Debtor admitted he has two separate properties which he receives income: 1) Rental property 4981 Martin Luther King Jr., Sacramento, California and 2) Inherited property (currently in probate) 136 Dolphin Court, San Francisco, California. When questioned at the 341, Debtor was unable to provide figures for rents received or mortgage expenses for either property. The Trustee requests that Debtor be required to provide evidence of both, rental income received for the properties, by means of rental agreement contracts or leases and also mortgage statements to show the contract payment amounts.

3. Debtor received $2,678.00 in federal tax refund for 2013. This figure does not include any state refund the Debtor may have received. Debtor has not reported this income on Schedule I. It appears the Debtor may have additional income that is not reported.

DEBTOR'S RESPONSE

Debtor responded to Trustee's objection on August 22, 2014, stating that:

1. On or about August 8, 2014, Debtor filed an amended Form B22C, the Statement of Current Monthly Income which appears to resolve that part of the Trustee's objection as to the improper calculation of Form 22C.

2. On or about August 8, 2014, Debtor filed amended Schedules I and J and a Declaration of Rental income which appear to resolve that part of the Trustee's Objection to Confirmation as to the rental income and expenses.

3. Debtor's amended Schedules I and J, which was filed on or about August 8, 2014 also appears to resolve that part of the Trustee's objection to the large tax refund.

Debtor offers no testimony (a simple declaration) in opposition to the

Objection to Confirmation. Instead, counsel merely argues "facts" from the schedules.

TRUSTEE'S AMENDED OBJECTION TO CONFIRMATION

On August 25, 2014, the Trustee filed an amended objection to confirmation in light of Debtor's response and amendments to schedules and Form 22C. In the amended objection, the Trustee continues to object, stating:

1. Form 22C has now been completed by the Debtor. Schedule I, line 8a states "Net income from rental property and from operating a business profession, or farm. Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." The Debtor has failed to complete this form correctly. The amended Schedule I filed by the Debtor lists the GROSS income of $2,750.00 from both rental properties on line 8a, which is incorrect. Dckt. 18. From Amended Schedules I and J (Dckt. 18), gross net income, computed only on rental income and mortgage payment, appears to be $1,072.62. This fails to take into account repair, maintenance, utilities, and other expenses. Further, Debtor does not provide the detail of the expenses in reaching the net income which is required for Schedule I. The Debtor has provided a Declaration of Rental Income which provides a breakdown of income and mortgage expenses for both rental properties.

2. The Debtor's amended Schedule J, line 20a lists the mortgage payments for both rentals in the amounts of $1,677.38, but does not appear to show any property taxes; based on the online records of the San Francisco Tax Collector, the monthly amount of property tax expense appears to be $329.15 ($1,974.92 divided by 6), if this amount is not included in the mortgage.

3. The Debtor added $276.25 from "Estimated Tax Refund" an amended Schedule I and according to line 13. "Tax refund of approximately $3,315.00 is expected to be received annually. These funds are used for ongoing expenses related to property maintenance, repairs, and upkeep for the rentals." The Debtor also amended Schedule J and deducted this exact amount $276.25 on line 20d for maintenance, repair and upkeep expenses on the rentals. The Debtor does not actually have this income in any bank account or cash, according to Schedule B and the Debtor has not explained what each of these expenses are, when they are paid, and why they are not originally listed on Schedule J.

On this point, Debtor's response appears to be (paraphrased by the court), "I get a $3,315 tax return and I'm keeping it for secret "expenses" I am never going to account for." While the Bankruptcy Code provides great protection and benefits for a debtor, it does not include a provision allowing a debtor to rewrite the Bankruptcy Code and Federal Rules of Bankruptcy Procedure,

4. The Trustee maintains part of his original objection and seeks

to amend his objection to assert that the plan may not pay unsecured creditors what they would receive in the event of a chapter 7 liquidation, 11 U.S.C. § 1325(a)(4), based on the potential value of the probate estate listed on Schedule B, a 3 bedroom, 3 bathroom condominium, described as "1,360 living square feet, 558 lot square feet, built in 1981," in San Francisco. The Debtor maintains that the fair market value is only $109,000.00 with mortgage of $100,000.00 and claims $6,963 exempt, so clearly non-exempt equity exists in the property. Where San Francisco County appears to show a taxable value the property of $138,244.00, the Debtor's value of $109,000.00 is at least $29,244.00 too low and unsecured creditors should be receiving more that the plan proposes, an estimated 5% of $44,309.00, which would be $2,515.45. The court should not find the Debtor's valuation of the property convincing without additional evidence.

DEBTOR'S RESPONSE TO TRUSTEE'S FIRST AMENDED OBJECTION TO CONFIRMATION

Debtor filed a response to Trustee's amended objection, stating:

1. Schedule I lists gross rental income, which is consistent with the means-test and Schedule G. Trustee wants an itemized accounting of expenses on this form, but Debtor does not claim any expenses to offset the income.

2. Trustee wants property taxes included on Schedule J but property taxes are included in the mortgage payments. Thus, if Debtor were to list the property taxes on Schedule J, then the property taxes would be accounted for twice.

3. The tax refund was estimated based on prior years in response to Trustee's prior objection. Debtor does not count on this money because it is not guaranteed. However, Debtor does not have any savings or other money allocated in his budget for the ongoing maintenance related to the two rental properties. If and when Debtor does receive a tax refund, the additional funds are used for unfunded maintenance related to the two rental properties.

4. Debtor's interest in real property of decedent is listed on Schedule B of his bankruptcy petition. The property is a section 8 rental property. Although the property has a fair market value estimated by the Debtor to be $109,000.00, that amount is offset by a secured claim on $100,597.12, which is held by Chase. Thus, the equity in the property is estimated to be $9,000.00 on Schedule B of Debtor's bankruptcy petition. Debtor claimed an exemption of $6,963.00, which left $2,037.00 unexempt. If the estate were liquidated under chapter 7, the cost of sale of the real property, which is estimated to be 5% would negate any of the equity, and creditors would receive $0.00 from the sale.

   a. Fair Market Value - $109,000.00

b.	Cost of Sale -	($5,450.00)
c.	Secured Claim -	($100,597.12)
d.	Exemption -	($6,963.00)
e.	Amount available for distribution -	($4,010.12)

Response, Dckt. 27.

DISCUSSION

While the Debtor does address some of the objections raised by the Trustee, not all are addressed. First, Debtor fails to provide the court with a credible budget of the Trustee. While Debtor is receiving, and counts on, a tax refund to make the budget work (there being no provision for the reasonable and necessary expenses and repairs of the rental property), (1) no explanation is provided as why Debtor continues to overpay taxes, (2) that such money will be paid into the Plan, or (3) that there will be any accountability for the Debtor with respect to the tax refunds. While the Debtor is offended that the Trustee questions how the property taxes are paid, it is Debtor's burden to provide the court, Trustee, creditors, and other parties in interest with evidence that the plan is feasible, which includes not only how Debtor will generate the income, but how that income is spent.

Taken at face value, Debtor's rental property is given a value of $75,000 (Schedule A, Dckt. 1, Martin Luther King Dr. Property), which is subject to liens of $64,043.00. Schedule A does not list property in San Francisco, California. Original Schedule I states that Debtor has net rental income of $1,685.65 and no expenses to generate that income. Dckt. 1, pg. 21. (No required statement showing the gross income and all expenses relating to the income provided.)

Debtor filed an amended Schedule I on August 8, 2014. Dckt. 18. On Amended Schedule I Debtor states that he has $2,750.00 in net income from the rental of real property. No required statement showing the gross income and all of the expenses in generating the net income figure is provided. On Amended Schedule J Debtor lists $1,677.38 in real property mortgage expense (not identified to any specific property) and $276.25 in maintenance, repair and upkeep expense (not identified to any specific property). Dckt. 18. At the bottom of Amended Schedules I and J Debtor states that he is going to keep a $3,315.00 annual tax refund to pay non-specific expenses for multiple rental properties (though only one rental property is listed on Schedule A).

Debtor lists on Schedule B interest in property in San Francisco, California as the sole beneficiary of an estate. No evidence is provided the court as to the Debtor's interest, why he is not on title to the property, who is in control of the property, and how the estate's interests in the property are protected. As for value of this property, Debtor just states on Schedule B that it (or his interest) has a value of $109,000.00. Therefore, Debtor unilaterally concludes that there is no value in the property for the estate or creditors. This dispute can be simply resolved by the parties engaging the services of an independent real estate agent to provide a preliminary opinion on value.

Debtor has not carried his burden in prosecuting the Motion or proposed Chapter 13 Plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

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

14. 11-24420-E-13 FRANK SCHRODEK AND JOANNE DE LA TORRE — MOTION TO MODIFY PLAN
PGM-4 — 7-30-14 [109]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2014. By the court's calculation, 41 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 denied the Motion to Modify Chapter 13 Plan.

Frank Schrodek and Joanne De La Torre ("Debtors") filed the Motion to Modify Chapter 13 Plan After Confirmation on July 30, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

DEBTORS' MOTION

Debtors move to modify their Chapter 13 plan. Due to Debtors' recent medical issues, they were not able to keep current on their plan payments. The modified plan would reduce monthly payments to $100.00 over 24 months to complete the 60-month maximum repayment period. The plan also provides that Debtors will pay a lump sum of $2,025.00. Debtors state that they have proposed this modification in good faith. Debtors also state that the modification will not modify rights of any secured creditors, but will modify the rights of unsecured creditors by increasing their dividend to 3.5%.

TRUSTEE'S OPPOSITION

The Trustee has filed opposition to this motion. The Trustee objects to the treatment of P-Fund, Inc., which was treated as a Class 2 creditor in the confirmed plan. The modified plan treats P-Fund, Inc. as a Class 2 and as a Class 4 creditor, the latter in which the creditor would be paid through the sale of a truck. The court denied Debtors' motion to sell that truck on June 30, 2014 and required that the sale proceeds be deposited with the Trustee. Furthermore, the Trustee has no knowledge of the Debtors commencing a proceeding against P-Fund, Inc. to recover the unauthorized disbursement as ordered by the court. It appears the Debtors are merely trying to modify their plan to, in effect, authorize the sale which was denied by the court.

The Trustee also objects to the modified plan because the Trustee is unsure that the debtors will continue to be able to pay. In the supplemental Schedules I & J submitted with Debtors' motion, income and expenses changed from previously filed schedules without an explanation from Debtors as to why the changes have occurred. The supplemental Schedule I does not reflect $77.28 in pension income from Central States which appears to be received monthly per bank statements. Additionally, it appears debtor 2's social security income is $1,003.00 per month per the bank statements and not $939.00 as reported. The supplemental Schedule J reports $610.09 for a mortgage payment that infers it includes taxes and insurance as lines 4a and 4b are $0.00. A Notice of Mortgage Payment Change was filed with the court on June 17, 2014 which states this amount is principal and interest only. The Trustee notes the following changes from the previous Schedule filed April 8, 2014:

1. Food and housekeeping supplies increased $50.00.

2. Medical and dental expenses increased $16.00

3. Entertainment increased $15.00

4. Debtor do not report any vehicle insurance on line 15c.

Trustee alleges that the Declaration filed by the Debtors indicates additional attorney fees of $1,700.00 will be requested. No pending motion for additional fees has been filed.

Lastly, the Trustee argues that the Debtors have incorrectly stated the monthly contract installment in Class 4 for Wells Fargo Bank is $696.84. The correct amount per the Notice of Mortgage Payment Change is $610.09.

DEBTORS' RESPONSE

Debtors filed a response to the Trustee's opposition. However, the response consists only of Debtor's counsel arguing about "facts," with no evidence of such "argued facts" having been presented. Debtor, and each of them, have refused or merely failed to provide that simple testimony under penalty of perjury in a declaration.

Debtors argue that P-Fund, Inc. has been paid in full and that Debtors are willing to comply with court orders in the future. Debtors also argue that the expense increases in their schedules are minimal and immaterial. Debtors

state that the additional attorney's fees requested in the modified plan are in response to decisions Debtors made that incurred additional attorney time than was provided for in the original plan. Debtors also state that the Wells Fargo installment contract change results in $86.75 savings to the Debtor, until the next escrow analysis which could result in an increase. The Debtors state that such a temporal savings should be allowed to be retained, or in the alternative, increase the Debtors' payments by $85.00.

DISCUSSION

Here, the Debtors' plan does not provide for all of the disposable income. Specifically, the discrepancy in the Wells Fargo Bank's monthly payment in the Plan and the Notice of Mortgage Payment Change leaves $86.75 of disposable unaccounted for in the Plan.

The Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Because the Debtors have this excess money due to the change in mortgage payments, the Debtors' disposable income is not fully committed to the Plan and violated 11 U.S.C. § 1325(b)(1).

Debtor and counsel argue that P-Fund has been "properly" paid and therefore there is no reason to recover the monies which were paid (those monies were monies received by the estate for an unauthorized sale of assets). This is an "interesting argument," which basically states – "we did what we wanted to do, we paid the money to the creditor we wanted, we transferred assets to the friendly parties we wanted to, and hang what the law requires – we owe no fiduciary duty." This shows not only a disregard for the fiduciary duties of both debtors, but a disregard of both debtors' fiduciary duties by their counsel.

In substance, Debtor, and counsel, argue that Debtor, and both of them, are "sorry" they violated the Bankruptcy Code, they have apologized, so now ratify their violations and let them lower their plan payments.

Debtor's cavalier attitude toward fiduciary duties, for each of the two debtors, is shown by the present Motion. Notwithstanding the substantial breaches of fiduciary duties, the Motion is framed and the "evidence" presented as if it were merely a routine motion to modify due to a change in mortgage payments. No provision is made to rectify the improper sale of the vehicle, the improper payment of monies, and the improper diversion of monies (the net sales proceeds) by Debtor, and each of them. While the Plan has a lump sum

$2,025 payment (apparently at the end of the plan), it is too little too late. As the court earlier addressed, this provision actually states, "we stole $2,025 from the estate, we're going to keep the $2,025, and if we pay the money back, at all, it will be years from now at no interest."

In light of the court's prior statements, if the Debtor, and each of them, were attempting to prosecute this case in good faith, they, and counsel, would not have tried to disguise this as a "routine" motion. Some of the court's earlier comments include,

> "This filing of the Amended Schedule C clearly demonstrates that neither the Debtors nor counsel appreciate the significance of making statements under penalty of perjury in this bankruptcy case. Rather, all three continue in their pursuit of saying anything and filing Liar Declarations to achieve their goals without regard to the Bankruptcy Code.
>
> The court notes that in this bankruptcy case the Debtors have done little other than pay the mortgage on the house they want to retain, pay their delinquent income taxes, and pay their attorney for assisting them in this case. No monies have been paid to creditors holding general unsecured claim or any creditors who would not have nondischargable claims. The court not retroactively approving the sale, which may well doom any plan in this case, will be of little moment to the Debtors. If the case were dismissed and they had to truthfully and honestly provide information in a new bankruptcy case and in good faith perform a bona fide plan, it would not be any different then if they were not in bankruptcy."

> "However, on May 13, 2014, the Debtor Frank Schrodek provides his Supplemental Declaration in support of the present motion. He testifies under penalty of perjury that he did not wait for the court to authorize the sale of the Truck, but instead on April 17, 2014, chose to just sell the vehicle (without authorization). He further testifies that he sold the vehicle on April 17, 2014, because I could not drive the truck in California After 12/31/13, as the air board wont allow any truck old [sic.] than 2005 to be driven in California. Dckt. 90.
>
> In an apparent justification for knowingly and intentionally selling the Truck without court authorization, Mr. Schrodek states,
>
> 'I had tried to sell the truck for some time, but not being able to drive it in California, it is very hard to sell it. It is worth a lot more than what it sold for. I could not let it sit any longer because in time seals and batteries go bad. It cost me almost $600 to find a buyer out of state.'
>
> *Id.*
>
> This post hoc justification does not ring true. The hearing on

the Motion to Sell (because the Debtors hid from the court the buyer and terms of the sale in the original motion) was continued to May 20, 2014. No evidence is presented that seals and batteries would go bad by the time for the hearing on May 6, 2014, set by the Debtors on their Motion."

"The court remains concerned regarding the unauthorized sale of estate property. Debtor admits that the property was sold for less than it was worth. Debtor did not offer any evidence of the current value of the subject property or any comparable vehicles to show that the sale price is reasonable. Debtors' Schedule B lists the value of the vehicle as $14,500.00, but admit that it is worth more in his Declaration.

Conspicuously absent from the Supplemental Declaration is any testimony as to what efforts were made to engage a broker to properly market and sell the Truck. Instead, it appears that the Debtors make a favored, below market same to a person who is now identified as Jonathan Breon. If sold for less than fair market value, the Debtors have violated their fiduciary duty to the bankruptcy estate.

The Debtors proceeded to knowingly, intentionally, and willfully violate the Bankruptcy Code. The court does not know if the Debtors did so in violation of directions from their attorney or lied to him about what they were doing. Counsels conduct in this case causes some concern. This is not the first time he has had clients who knowingly sold assets without obtaining authorization. In once case, the debtors did so after the court expressly denied a motion for authorization to sell. (The denial was without prejudice, again because the motion and supporting evidence prepared by Counsel did not meet the minimum necessary to grant such motion.)"

"The court denies the Motion to Approve the Sale without prejudice. Debtors have failed to show any legally sufficient basis for so retroactively approving the sale. The court recognizes that the failure to now approve the sale creates a significant legal risk for the Debtors and the buyer. There is property of the bankruptcy estate which is in the hands of a person who incorrectly believes he may own it. The Debtors, as fiduciaries of the estate have improperly disposed of assets, paid monies to a creditor other than as provided for in the plan, and then have taken the monies to use for their own purposes (including purchasing a $1,000.00 TV).

The court declines Debtors suggestion that the court punish them by forcing them into a Chapter 7 case. It appears that such sidestep is exactly what they Debtors may want to try and further cover-up their violation of the Bankruptcy Code and improper transfer of estate assets. Quite possibly the Debtors believe that a Chapter 7 trustee with no assets to fund expenses, would have to let the Debtors suffer the fate of

being granted their Chapter 7 discharge. The Debtor are not going to be forced to suffer that fate.

At this juncture, the court leaves it to the Chapter 13 Trustee, U.S. Trustee, and other parties in interest to determine if this case should continue as a Chapter 13 case, be converted to Chapter 7, be dismissed with prejudice, or dismissed without prejudice. These persons in interest can also determine what claims the estate may have for conversion or other improper disposition of estate assets, whether any such claims should be prosecuted, and if they should be prosecuted, the proper party to do so."

Civil Minutes, Motion to Approve Sale (retroactive), Dckt. 106. See also Civil Minutes from May 20, 2014 hearing on prior Motion to Sell (motion misstates that relief to sell the property in future is sought, when it had actually already been sold by the Debtor). Dckt. 93.

Debtor attempts to justify the current minimal play payment, and to cover up the breach of fiduciary duties, by stating that they have only $2,329.00 of monthly income from Social Security. Exhibit 2, updated Schedule I, Dckt. 112. Debtor then lists $2,226.64 in expenses, leaving only $102.36 to fund a Plan. Exhibit 3, updated Schedule J, *Id.* Thus, though the Debtor, and each of them, diverted $15,000 from the estate (used to improperly pay a creditor and to buy personal items, including a big screen television), Debtor cannot be expected to pay anything more.

Debtor, and each of them, continue in their bad faith prosecution of this case and efforts to improperly divert property of the estate to others, contrary to the provisions of the Bankruptcy Code. Debtor, and each of them, also seek to gain further from the earlier breaches of fiduciary duties.

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 Modify Chapter 13 Plan After Confirmation 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 Modify Chapter 13 Plan After Confirmation is denied and the proposed Chapter 13 Plan is not confirmed.

15. 14-26820-E-13 JUVENAL ZAMORANO
DPC-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
8-6-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 6, 2014. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's Plan proposes to pay interest on arrears to Class 1 creditor Select Portfolio Servicing. As according to Section 2.08(a)(1) of the Plan, if the provisions for interest is left black, interest at the rate of 10% per year will accrue.

2. According to the Trustee's calculations the Plan will complete in 67 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The cause of the over-extension is the dividend to mortgage arrears raised on the Trustee's first objection.

3. The Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is below median income and proposes a 60 month plan paying $1,665.00 per month with a 20% guaranteed dividend to unsecured claims. Debtor reports his income on Schedule I with a gross amount of $2,821.00 per month and $1,880 net per month. A review of Debtor's paystubs reveals that Debtor is paid a weekly amount of $892.31. This calculates to approximately $46,400.12 per year if multiplied by 52 weeks per year, or a monthly gross average of $3,866.68 if you divide the annual amount by 12. Debtor's net income after deductions averages $2,827.20 per month.

4. The Debtor cannot afford to make the payments or comply with the Plan. 11 U.S.C. § 1325(a)(6). Debtor's Plan relied on the Motion to Value Collateral of Bank of America, which was set for hearing on August 26, 2014. Dckt. 15. This motion was granted, resolving this portion of the objection.

5. The Trustee is unable to determine whether the Debtor can make the proposed plan payments. The Debtor has failed to provide the Trustee with his non-filing spouse's proof of income for the 60 days preceding filing of the bankruptcy. 11 U.S.C. § 521(e)(2(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). While Debtor provided paystubs for his employment, the Debtor had not provided pay advices for his non-filing spouse. The income is relied on as a source of income in the household and the Trustee needs to verify that the income is a valid source to rely upon to make plan payments.

6. The Debtor failed to list a prior bankruptcy case on their petition, Case number 08-27225 has not been disclosed.

DEBTOR'S RESPONSE

Debtor had not filed a response or opposition.

XXXXXXXXXXXXXXXXXXXXXXXXX

DISCUSSION

Trustee's fourth objection is overruled because the court issued on order granting the Motion to Value Collateral of Bank of America on August 29th, making the objection moot.

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

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

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

16. 12-26623-E-13 NAVRAJ/INDU JASUJA — CONTINUED MOTION TO MODIFY PLAN
PGM-8 Peter G. Macaluso — 6-17-14 [162]

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

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

Below is the court's tentative ruling.

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

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

Navraj and Indu Jasuja ("Debtors") filed a Motion to Confirm the Modified Plan on June 17, 2014. The matter was continued from July 22, 2014 to allow the parties the opportunity to meet and make necessary disclosures and corrections to the plan

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The terms of the proposed Modified Plan (Dckt. 116) are:

A. Plan Payments by Debtors totaling $18,980.00 through May 2014.

B. Plan Payments by Debtors of $550.00 a month for thirty-five months.

C. Plan Term of sixty months.

D. Debtor's counsel to be paid (subject to court approval) $2,500.00 through the Chapter 13 Plan.

E. Administrative expenses of $495.00 a month. [If accurate, then only $55.00 a month of the plan payment would be available to be disbursed for claims.]

F. Class 1 Claims.....None

G. Class 2 Claims

1. Sacramento County, Prop. Taxes.....None (paid)

2. RC Willey Fin. Svcs.....None (paid)

3. U.S. Bank - 2nd DOT.....$0.00

H. Class 3.....None

I. Class 4 Direct Payment by Debtors

1. Bank of America - 1st DOT.....$1,387.96

2. Bank of America - 1st DOT (w/arrears).....$1,387.00

3. Santander Con. USA (paid by third party)...$ 444.08

J. Class 5 Priority

1. EDD.....$172.53

K. Class 6 Designated Unsecured Claims.....None

L. General Unsecured Claims

1. 5.8% Dividend on $285,118.63 ($16,536.88 aggregate dividend)

a. Per Month.....$275.61 (60 months)

b. Per Month.....$472.48 (35 Months)

Fourth Modified Plan, Dckt. 166. In light of prior plans providing for only a nominal dividend for creditors holding general unsecured claims (1.8% in the confirmed First Amended Plan, proposed First Modified Chapter 13 Plan, and the proposed Second Modified Chapter 13 Plan, Dckts. 21,89, 105), it appears that the 5.8% dividend must be funded in the remaining 35 months of the plan, necessitating $472.48 a month going to creditors holding general unsecured claims.

TRUSTEE'S OBJECTION

Upon review of the proposed plan and the existing record, the Trustee recommends approval of the modified plan, provided that the treatment of the RC Willey Financial Services is changed to class 4 (instead of listed as a Class 2 claim with monthly dividend as "paid") and that attorney fees in the plan are limited to the $3,500.00 provided in the plan (which the trustee has already paid).

The Trustee notes several issues:

1. Commercial Lease: Section 3.02 of Debtor's modified plan includes a commercial lease with a regular monthly payment of $2,400.00. Debtor's Declaration states, "We will also continue lease payments for the commercial lease." Debtor did not file updated income and expense statements, but Debtor's prior Schedule Js do not budget for lease payments. Debtors sold their business inventory without Court authorization and are no longer in business, so that the Trustee believes the lease is no longer held by the Debtor; but the First Amended Plan provided for the lease, and was confirmed so the lease was already assumed. While the better procedure may have been to add additional provisions to reflect the history, where the lease has been assumed and where the Debtor no longer holds the lease, the Trustee does not believe it prejudices the rights of the Debtor subject party, or of creditors.

2. Amended Schedules I and J. The Debtor has not filed amended Schedules I and J in support of the proposed plan payment of $550.00. Debtor's prior Schedules filed on December 10, 2013 support a plan payment of $526.08. Debtor's prior Schedule J provides for a mortgage payment of $1,527.00, when creditor, Bank of America's proof of claim (Court Claim #26) states Debtor has a fixed interest loan of 5.250% with principal and interest payments of $1,387.96, a difference of $139.04. Debtor's Schedules show they have two children, ages 14 & 17, that one works for the post office for the last 15 years and the other works for "Immuno Concepts" in sales for the last two years. Debtor claims various deductions and expenses, which include items that are matters of discretion, (such as retirement contributions), and based on a review of the Debtor's records, the Trustee believes the Debtor can afford the proposed payments.

3. Taxes: The Trustee has reviewed the tax returns of the Debtor for 2012 and 2013 which show a total refund in 2012 of $2,549.00 state, $5,800.00 federal, and $2,729.00 state, and $6,881.00 federal, in 2013. The Debtor has had an average tax refund each year of $8,979.50.

4. Monthly Dividend for Class 2 RC Wiley Financial Services: Debtor's modified plan proposes to provide for RC Willey Financial Services in Class 2. Creditor filed a proof of claim on May 7, 2012 (Court Claim #8) for $7,982.54, of which $5,627.00 is claimed as secured and $2,355.54 unsecured. While Debtor now provides for this claim in Class 2, the monthly dividend is stated as "Paid" when no disbursements have been made to this creditor, effectively not providing for this creditor so the debt will not be discharged.

5. Percentage to Unsecured: Section 2.15 of Debtor's modified plan proposes a dividend to unsecured creditors of no less than 5.8%. The Trustee calculates that unsecured creditors will receive up to 10%, without factoring in all future tax returns that are to be paid into the plan. Where this case is past the bar date for filing timely claims, the Trustee does not oppose the modified plan percentage as a minimum.

Trustee also states that the Debtor is proposing to pay in substantial additional amounts into the plan for the benefit of unsecured claims. The reason that the good faith in proposing the plan is being questioned is because of the sale of the Debtor's business property without Court approval, and the continued inability of the Debtor to obtain approval of the sale either directly or by means of a modified plan. Trustee concludes that the proposed modified plan will remedy the situation.

Trustee states that previously either the Debtor's Attorney was not receiving accurate information from the Debtor, in which case the Debtor's Attorney still had a duty to verify the accuracy of the pleadings submitted, or the Debtor's Attorney was not asking for the necessary information in a timely fashion and presenting it to the Court.

In this case the Debtor sold their business, a restaurant, as soon as they had a purchase offer. While the Debtor's Attorney made a motion to sell, he described the property incorrectly as real property. The second time he made the motion to sell he proposed to open an IRA with the proceeds, when the Trustee objected that the proposed sale would prevent plan payments. After the second sale motion was denied, no further sale motion was made, and a modified plan was proposed where the motion did not address the sale. The Debtor's Attorney stated that the sale did not occur, (DN # 94, Page 1, Lines 27-28, 7/28/2013.) The Debtor stated when attempting to confirm their second modified plan that the sale had occurred prior to October 30, 2012, (DN # 108, 1 0-12), and finally explained what happened in the Debtor's Declaration in Support of Opposition to the Trustee's Motion to Convert, that the sale had occurred before the first motion to sell was heard, although it incorrectly states that was the reason the sale was denied.

Trustee states that while the representation by the Debtor in the opposition to the motion to dismiss appears genuine, it does not explain why Debtor's attorney made prior representations that did not include these details: the first motion to sell proposed the sale of real property, the second motion to sell was made after the business was sold, the first two motions to modify did not directly address the sale, and the first motion to modify after the Trustee's Motion to Convert did not directly address the sale.

Trustee also notes that if necessary, Debtor be afforded the opportunity to address the prior ruling in this matter at an evidentiary hearing if the court deems appropriate.

DEBTOR'S REPLY

Counsel for Debtor submitted a reply, clarifying that the commercial lease ended around the time of the sale and no payments are due as to the lease. Counsel states that the different of the plan payment and the disposable income can be remedied with an amended Schedule J lessening the recreation expense for the family. Counsel agrees that RC Willey claim can be moved to Class 4 and that the percentage to unsecured claims can be corrected in the order confirming. Counsel states he will be seeking fees in the amount of $2,500 and therefore, does not agree with the restriction suggested by the Trustee to limit Counsel to the fees already set forth in the plan and paid.

PRIOR HEARING - JULY 22, 2014

The court continued the matter until September 9, 2014 at the request of the parties to allow the Debtors to meet and confer with the Chapter 13 Trustee to address paying back into the estate, in addition to the projected disposable income (including tax refunds), the $20,000.00 in sale proceeds they received from unauthorized sales of property of the estate.

TRUSTEE'S SUPPLEMENTAL RESPONSE IN SUPPORT OF DEBTORS' MOTION TO MODIFY

On August 28, 2014, the Trustee submitted a supplemental response in support of Debtors' motion to modify. In support, the Trustee reviews the plan and the supplemental tax return treatment. The Trustee states that when the tax returns are included in Debtor's plan payments, the proposed modified plan could potentially pay a total of $65,186.50 compared to the $16,800.00 payout under the current confirmed plan. The Trustee notes that this is a difference of $48,368.50.

The Trustee finds this payment arrangement acceptable provided the tax refunds both state and federal are submitted, and Debtor does not seek to reduce their tax refund by changing their tax withholding.

The Trustee also notes that the proposed modified plan includes a commercial lease in Section 3.02 with a regular monthly payment of $2,400.00. Debtor sold their business inventory without court authorization and are no longer in business, so that the Trustee believes the lease is no longer held by the Debtor; but the First Amended Plan provided for the lease, and was confirmed so the lease was already assumed. Debtor could have added the history of the lease in the additional provisions, but the Trustee does not believe it prejudices the rights of the Debtor subject party, or creditors.

The Trustee does not oppose the proposed plan payments or the 5.8% dividend to unsecured creditors as a minimum and recommends approval of the modified plan provided:

1. Treatment of the RC Willey Financial Services which is listed as Class 2 with a monthly dividend of "Paid," is charged to Class 4 with language provided in the order confirming.

2. No additional attorney fees are approved as part of the confirmation process. $3,500.00 of attorney fees were previously approved, and the Trustee has paid $2,500.00 where $1,000.00 was paid prior to filing.

DEBTORS' REPLY TO TRUSTEE'S RESPONSE IN SUPPORT

Debtors filed a reply to Trustee's response in support. Debtors state that the currently confirmed plan pays 0% to the class 7 general unsecured creditors, which totaled $285,118.63, while the Fourth Modified Plan offers to increase the amount to general unsecured to 5.8%, or $16,536.88.

Debtors outline events that have occurred that led to the increase to the overall percentage to unsecured creditors whom are participating in the case:

1. The Debtors' counsel has filed an objection to claim #17-1, in which a stipulated settlement, in an underlying adversary proceeding called for a total of $11,000.00, to be and on the claim, settling the action, specifically settling the claim, thus negating the validity of claim #17-1, in the amount of $20,157.64. If successful this would further increase the percentage to unsecured creditors to 6.24% by reducing the class 7 claims by $20,157.64 to $264,960.99.

2. The Debtors will continue to provide all tax refunds to the Trustee for the life of the plan, which is expected to generate at the minimum of additional $10,000.00, thereby totally $26,536.99 to be paid to the plan.

3. The total amount of class 7 claims is estimated to be $264,960.99, with an estimated minimum payout of $26,536.88. As such, the plan provides for a 10% payout to unsecured claims.

4. Trustee supports the proposed modification.

DISCUSSION

Case History

The court has addressed the conduct of the Debtors, as the fiduciaries to the Bankruptcy Estate, in selling property of the estate. The first motion to sell was filed on August 14, 2012, Dckt. 46. That motion was denied without prejudice. Order, Dckt. 61. In denying the Motion, the court stated,

"The Chapter 13 Trustee objects to the sale of the real

property since the real property is not listed on Schedule A. The Debtors disclose on the Statement of Financial Affairs that they operate a business at
7467 Village Parkway in Dublin, but they do not claim an ownership interest. Debtors do no disclose any executory contracts or unexpired lease on Schedule G.

Debtors admit in their reply that they do not seek to sell the real property, but the business operated at the real property. The motion, however, it quite clear as to the relief Debtors seek. As the sale is not in the ordinary course of business, all creditors are entitled to notice. Fed. R. Bankr. P. 2002(a)(2). In this case, creditors have notice that the Debtor seeks to sell the real property. They do not have notice that the Debtor instead seeks to sell the business located the real property.

This Motion is fatally defective as it does not identify the property to be sold. The Notice of Hearing is fatally defective because it misidentifies the property being sold. If the Debtors wish to sell their business and the personal property of the business then they may file a motion to sell those personal property assets, with that motion actually identifying what is to be sold (and not merely generically describing the assets as business and inventory."

Civil Minutes, Dckt. 59.

The Debtors then quickly returned with a second motion to sell. Motion, Dckt. 62. That motion was denied. Order, Dckt. 77. Again, the court had significant problems with the Debtors' credibility and good faith.

"The undisclosed assets, the multiple amended Schedules, and the failure to disclose payment of property taxes on the eve of bankruptcy significantly impair the Debtors' credibility. The Debtors state under penalty of perjury in the Schedules that the business only has a liquidation value of $12,000.00 and no goodwill value. For the current sale, the value has risen sufficient to sell it for $20,000.00, with the buyer paying $3,000.00 for goodwill. Not coincidently, the additional values are just enough to pay what the Debtors identify as sale expenses so that they can claim a new exemption in the remaining net proceeds of just less than $12,000.00 (the amount of the exemption claimed in the business, including the tools of the trade exemption).

The testimony and Purchase Agreement provided to the court is devoid on any information as to the purported $5,735.00 costs of sale and the $3,000.00 in purported taxes. Fortunately, from the Debtors' perspective, this works out to be exactly the number of expenses and taxes so that the remaining net proceeds can be within the re-reamended exemption amounts previously stated by the Debtors. The court does not find the Debtors' testimony as to the expenses and

taxes to be credible.

> The court will not approve a sale which purports to authorize the payment of unidentified expenses and taxes. Further, the court will not approve a sale that may purport to authorize the Debtors to claim the proceeds as exempt. The Debtors have filed a blizzard of amended schedules, including amended exemptions. Further, the amended schedules have disclosed cash accounts for which no plausible explanation has been provided for the failure to disclose when the case was filed or earlier in these proceedings.
>
> Finally, the court has no idea what assets are being sold. The motion sees [sic.] to sell generically described assets consisting of "business inventory, equipment and goodwill located in the property commonly known as 7467-69 Village Parkway, Dublin, California." Dckt. 62. The court has no idea if the inventory consists of two boxes of salt, three chickens, and a bottle of pepper, or a freezer full of food to prepare a banquet for 200 persons. Additionally, the equipment could consist of a one burner stove, hot plate, to pans, and a spatula, or may be a 14 burner Wolf stove, six oven, three walk in freezers, three stainless steel work tables with built in sinks and disposals.
>
> The Business Purchase Agreement states that a list of the equipment being sold is attached, but that disclosure has been omitted from the Exhibit A filed with the court. Dckt. 65. Further, though not disclosed in the Motion, the Business Purchase Agreement allocates $2,000.00 for the Debtors and estate not to compete within 5 miles of the Dublin, California location of the business being sold.
>
> The court cannot issue an order which effectively states that the Debtors may sell the "Stuff" used in the business. That is what has been requested by the Debtors. The court also will not approve a sale and blindly parrot purported expenses merely because the Debtors say that such expenses exist."

Civil Minutes, Dckt. 75.

With no order from the court, the Debtors, in their fiduciary capacity, took property of the bankruptcy estate and disposed of it.

At the hearing on the objection to claim of exemption the court recalls stating that these Debtors clearly have the ability to immediately put the $20,000.00 they improperly took, back into the estate.

> The court is very surprised that, after hearing the court's comments at the prior hearing and reading the ruling, the Debtors have not come forward providing for the $20,000.00 of ill gotten gain to be paid into the plan. The breach of fiduciary duty is not a mere "technicality" or "faux truth"

> that can be ignored. Converting property of a bankruptcy estate by a fiduciary raise substantial civil and criminal law issues.
>
> The Debtor clearly have the ability to place the $20,000.00 they improperly took and now claim as exempt back into the estate. But this appears to be the farthest thing from their mind, trying to nickel and dime the way out of their breach of fiduciary duty. This appear to be part of what may be a larger strategy to abuse the Bankruptcy Code, Estate, and creditors, hide assets, and steal as much as they can from the estate.
>
> The court finds that Debtors have acted in bad faith and therefore, sustains the Trustee's objection. The Debtors' exemptions claimed in the Restaurant business and assets is denied.

Civil Minutes, Dckt. 142.

Review of Proposed Plan

Debtor's Modified Plan proposes a plan payment of $18,980.00 total paid in through May 2014, then $550.00 for 35 months. Dckt. 166. Under the proposed modified plan Debtor will pay a total of $38,230.00 throughout the life of the plan (18,980.00 + $19,250.00 ($550.00 x 35)). To comply with the Court's order, Debtor would need to pay over the life of the plan a total of $36,800.00. The Debtor's proposed plan payments totaling $38,230.00 complies with the Court's order.

The Debtors and the Trustee have met and resolved the issues that both the Trustee and the court noted concerning the feasibility and good faith of the Fourth Amended Plan. Since the Debtors have seemingly corrected their bad faith actions which disturbed the court at the earlier hearing, the Fourth Modified Chapter 13 Plan appears to comply with the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329.

The proposed Fourth Modified Chapter 13 Plan does comply with the requirements of 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.
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Fourth Modified Chapter 13 Plan filed on June 16, 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.

17. 14-24924-E-13 DPC-1 | **EKOW-YARTEL CUDJOE** Mikalah R. Liviakis | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** 6-18-14 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 83 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, Chapter 13 Trustee, ("Trustee") filed the instant objection to confirmation of the Plan on the basis that the plan is not the Debtor's best effort. On July 22, 2014, there was a hearing on the motion. The court continued the matter until September 9, 2014 at 3:00 p.m. to all the Debtor the opportunity to file supplemental exhibits showing a reduction in overtime, a reduction in retirement withholding, and a change in his tax status. However, the Debtor has not provided any of these supplemental

exhibits.

According the Trustee in his Objection, the Debtor appears to be over the median income and propose plan payments of $799.00 per month for 60 months, with a 25% dividend to the unsecured creditors. Trustee states the Debtors gross income is listed on Schedule I in the amount of $7,588.00 ($5,638.00 monthly gross, $1,950.00 monthly overtime). Debtor's Year to Date income according to the pay advise Pay Period ending 04/14 $62,658.07 or $15,664.51 gross per month ($62,658.07/4). Schedule J, line #13 states that "Going forward Debtor will not be working as much over time as he has in the prior 6 months." It is not clear to the Trustee if the overtime the debtor has earned through April 2014 was mandatory overtime or if the debtor can and has voluntarily reduced the amount of hours he works.

Additionally, the Trustee states the Pay stubs provided to him show that the debtor's deductions are as follows:

RETIREMENT $565.20
MEDICARE $ 75.38
FKAISER $392.19
FWESTRNDNT $44.94
CCPOA VIS $ 2.00
457PLAN $1300.00
PERSSURV $ 2.00
ROTH457 $300.00
DUES-CCPOA $79.87
PERS SUR AD $ 3.35

Trustee states that the debtor has a total of $2,165.02 allotted for retirement deductions, or approximately 38% of his gross income ($2165.02/$5638).

Trustee also states that Schedule I only lists $565.20 as Mandatory retirement (line #5b) and $450.00 on line #5c as Voluntary contributions. This differs by $1,149.82 from what is listed on his pay advices. ($2165.02- $565.20 -$450-.00 = $1149.82) Schedule I, line #5a lists the debtors tax, Medicare and Social Security deductions as $1,500.00. The pay advices reflect only Medicare in the amount of $75.38 as being deducted on a monthly basis. In fact, the pay advices reflect the debtors Tax Status for both Federal and State as "ExlvlP." Debtors counsel stated on record at the First Meeting of Creditors that he advised the debtor prior to filing to adjust his deductions and the debtor stated that he has not.

Furthermore, Trustee states Form B22C reflects monthly disposable income on line# 59 of -$46.90 but that the Debtor may have not properly completed the Form B22C. The Trustee objects to the income listed in Column A in the amount of $9,149.38. According to the Trustee's analysis of the debtors pay stubs provided to the Trustee it appears the income in Column A should be $10.417.37.

Expenses:
Line #57 (Special Circumstances) list the following items:
#57 a: $40.00 for Chapter 13 Attorney Fees Through Plan and
#57 b: $2,000.00 Estimated tax withholding (from monthly

wages)

The Trustee does not believe the Chapter 13 Attorney Fees qualify as a special circumstance and the estimated tax withholding of $2,000.00 does not match the $1,500.00 listed on Schedule I line #5a. Trustee concludes that Form B22C line #59 should actually reflect a positive disposable income. The Trustee calculates the plan could pay as much as 100% to the unsecured creditors if the plan payment increased to $1,033.04 per month.

Lastly, Trustee states that Schedule B #12 lists State of California Retirement and Balance is estimated in the amount of $28,000.00. It does not appear the debtor has listed all of his assets correctly on Schedule B as the debtors pay advices show deductions of $565.20 towards retirement, $1,300.00 towards 457 Plan and $300.00 for the Roth 457.

While the Debtor filed a response stating that the Trustee's objections have been remedied but would not be reflected in the Debtor's paycheck until August 1, 2014, the Debtor has not filed any supplemental responses or exhibits as evidence of these changes. Without this supplemental evidence curing the Trustee's objections, the Trustee's objection are sustained.

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

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

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

18. 14-22236-E-13 GEORGE KNOOP
DJC-4 Diana J. Cavanaugh

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 6
7-7-14 [19]

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

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 12 of Cavalry Investments, LLC is sustained and the claim is disallowed in its entirety.

George Knoop, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,252.11. Objector asserts that the Creditor's debt is a legally stale debt because the statute of limitations of four years since the date of last transaction has expired.

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

2006).

Pursuant to California Code of Civil Procedure § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to California Code of Civil Procedure § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

Here, the Claim is time-barred under California law. The statement of account attached to the claim shows that the date of the last monetary transaction on the account was June 10, 2008. FN.1. Under California law, the cause of action on Creditor's claim began accruing on June 10, 2008– over four years ago. By failing to respond to the objection, Creditor has failed to carry its burden.

FN.1. The Objector states in his motion that the last transaction date was over 12 years ago. However, upon review of the Creditor's claim, it appears that the last monetary transaction, here the last payment, was on June 10, 2008.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Bank, N.A., Creditor filed in this case by George Knoop, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6 of Wells Fargo Bank, N.A., Creditor is sustained and the claim is disallowed in its entirety.

19. 14-22236-E-13 GEORGE KNOOP MOTION TO MODIFY PLAN
DJC-5 Diana J. Cavanaugh 7-9-14 [25]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

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

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

George Knoop ("Debtor") filed the Motion to Confirm First Modified Chapter 13 Plan on July 9, 2014. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

David Cusick, Chapter 13 Trustee, filed an objection to the Debtor's Motion to Confirm the Modified Plan. The Trustee's objection is based on:

1. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $680.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $680.00 have become due. The Debtor has not made any plan payments.

2. Section 1.03 and Section 6 of Debtor's modified plan propose a

commitment period of 58 months. The commitment period under the confirmed plan is 60 months. Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Dckt. 1, page 46) indicates Debtor is above median income and the applicable commitment period is 5 years.

3. Debtor provides for Sutter County Tax Collector as a Class 2 secured claim in the amount of $18,491.32 with a monthly dividend of $470.00. To date the creditor has not filed a proof of claim, but the bar date has not passed in order for them to do so. The bar date for government agencies in this case is September 1, 2014. Debtor's plan will not be feasible, possibly taking an additional 65 months, should Sutter County Tax Collector file a claim.

4. Debtor has filed two objections to claims involving Wells Fargo Bank, N.A. and Cavalry Investments, LLC. Debtor's plan will not be feasible if Debtor's objections are not upheld.

The court has granted Debtor's Objections to Claims as to Wells Fargo Bank, N.A. and Cavalry Investments, LLC, thus Trustee's objection as to item 4 is overruled.

However, the remaining items on the Trustee's objection are problematic as to confirming Debtor's modified plan. Sutter County Tax Collector filed a proof of claim on August 29, 2014, within the permitted time frame for a governmental agency to file a proof of claim. Claim 13.

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.

20. 14-22236-E-13 GEORGE KNOOP
DJC-6 Diana J. Cavanaugh

OBJECTION TO CLAIM OF CAVALRY INVESTMENTS, LLC, CLAIM NUMBER 12
7-18-14 [29]

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

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 12 of Cavalry Investments, LLC is sustained and the claim is disallowed in its entirety.

George Knoop, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $13,986.27. Objector asserts that the Creditor's debt is a legally stale debt because the statute of limitations of four years since the date of last transaction has expired.

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

2006).

Pursuant to California Code of Civil Procedure § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to California Code of Civil Procedure § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

Here, the Claim is time-barred under California law. The statement of account attached to the claim shows that the date of the last transaction on the account was October 22, 2003. Under California law, the cause of action on Creditor's claim began accruing on October 22, 2003 – almost 11 years ago. By failing to respond to the objection, Creditor has failed to carry its burden.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Cavalry Investments, LLC, Creditor filed in this case by George Knoop, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 12 of Cavalry Investments, LLC, Creditor is sustained and the claim is disallowed in its entirety.

21. 14-26737-E-13 GEORGE ISERI
DPC-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
8-6-14 [22]

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. 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, Chapter 13 Trustee, ("Trustee") opposes confirmation of the Plan on the basis that the plan relies on the pending motion to value Collateral of Golden One Credit Union and that all sums required by the plan have not bee paid required by 11 U.S.C. § 1325(a)(2).

The Motion to Value Collateral of Golden One Credit Union having been granted, the Trustee's objection concerning the reliance on the pending motion is moot.

However, the Trustee's objection to Debtor's delinquency under the Plan is ripe. The Trustee alleges that the Debtor is $232.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $232.00 is due on August 25, 2014. The Debtor has paid $0.00 into the plan to date.

Under 11 U.S.C. § 1325(a)(2), if a Debtor is delinquent, the Plan cannot be confirmed. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

22. 14-26737-E-13 GEORGE ISERI
JME-2 Julius M. Engel

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
8-21-14 [34]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Golden 1 Credit Union, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 21, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Golden 1 Credit Union is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by George Iseri ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6560 Golf View Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $125,000.00 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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $135,176.50. Creditor's second deed of trust secures a claim with a balance of approximately $23,841.74. 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 George Iseri ("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 Golden 1 Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 6560 Golf View Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $125,000.00 and is encumbered by senior liens securing claims in the amount of $135,176.50, which exceed the value of the Property which is subject to Creditor's lien.

23. 14-27037-E-13 WILLIAM JOHNS
DPC-1 Scott D. 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. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor failed to appear at the First Meeting of Creditors, Debtor failed to provide the Trustee with pay advices for the 60 days prior to filing, Debtor failed to provide tax returns, and Debtor is not able to make plan payments.

One of the basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan

while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee objects to confirmation because Debtor failed to provide the Trustee with pay advices for the 60 days prior to filing under 11 U.S.C. § 521(a)(1)(B)(iv).

Trustee also objects on the grounds that the Debtor failed to provide the Trustee with a tax transcript of his Federal Income Tax Return, required under 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. P. 4002(b)(3). Under 11 U.S.C. § 521(e)(2)(A)(1), Debtor is required seven days before the date first set for the meeting of creditors to provide this information to the Trustee

Lastly, Trustee objects on the ground that Debtor is unable to make plan payments under 11 U.S.C. § 1325(a)(6) because the priority claimed filed by the Internal Revenue Service is not fully accounted for in the Plan. The priority claim is valued at $92,594.36. Claim 1. However, the Plan provides for a priority amount of $3,800.00 which is $88,794.36 less than the claim amount. Furthermore, the Trustee notes that two previous cases have been filed by Debtor which were not disclosed on the present petition. In those cases, the Debtor did not attend the meeting of creditors either, according to the records of Lawrence Loheit, the trustee over those two prior cases.

Debtor has not filed any response to Trustee's objection.

The court, in taking into consideration the Trustee's motion and the evidence provided, 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 David Cusick, 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.

24. 14-26838-E-13 BLG-2 | **TERRY HAMILTON AND NICHOL ARANDA**
Pauldeep Bains | **MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, NA**
8-1-14 [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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, Office of the United States Trustee, and insufficiently on Bank of America, N.A. on August 1, 2014. By the court's calculation, 39 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. is granted.

The Motion to Value filed by Terry Hamilton and Nichol Aranda ("Debtors") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. FN. 1. Debtor is the owner of the subject real property commonly known as 2142 Beaujolais Court, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $246,689.00 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).

FN.1. The court points out that Debtors served Bank of America, attention to "Officer, A Managing or General Agent or Agent for Service of Process." Under Federal Rule of Bankruptcy Procedure Rule 7004, there is a distinction between serving a domestic or foreign corporation and an insured depository, the latter which requires service to be made by certified mail and addressed to an officer of the institution. *Compare* Fed. R. Bankr. P. 7004(h) *with* Fed. R. Bankr. P. 7004(b)(3). While Debtors did send certified copies, better practice and what is required by the Rules is to expressly identify for Rule 7004(h) service "Attn: Officer - Service of Process."

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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $251,831.64. Creditor's second deed of trust secures a claim with a balance of approximately $66,969.92. 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 denied based on insufficient service.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Terry Hamilton

and Nichol Aranda ("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 Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 2142 Beaujolais Court, 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 $246,689.00 and is encumbered by senior lien securing claims in the amount of $251,831.64, which exceed the value of the Property which is subject to Creditor's lien.

25. 14-26838-E-13 BLG-1 | **TERRY HAMILTON AND NICHOL ARANDA** | **CONTINUED MOTION TO CONFIRM PLAN**
Pauldeep Bains | **7-15-14 [12]**

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

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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 court's decision is to grant the Motion to Confirm.

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

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

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

TRUSTEE'S OPPOSITION

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

DEBTOR'S RESPONSE

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

DISCUSSION

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. Because the Motion to Value has been granted, Trustee's objection that the Debtor cannot afford to make the payments because the Plan is contingent on the Motion to Value is now moot.

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 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

26. 14-26839-E-13 DPC-1 | **ELIZABETH MADEWELL** **Pauldeep Bains** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 8-6-14 [13]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's 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. At the hearing ----------.

The court's decision is to sustained the Objection.

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

1. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6) and

2. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2).

Specifically, the Trustee alleges that Debtor admitted at the 341

Meeting held on July 31, 2014 that her income is not what is reported on Schedule I. At the time of filing, Debtor had recently retired. The income on Schedule I was a "projected" amount. Trustee alleges that Debtor has now been advised that her retirement pension is to be $891.00 per month, not the $4,254.68 per month reported.

Trustee also alleges that the Debtor is $1,500.00 delinquent in the plan payments to the Trustee to date and the next scheduled payment of $1,500.00 was due on August 25, 2014. As of the date of the objection, Debtor has paid $0.00 into the plan.

Debtor has not filed any opposition or response.

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

27. 14-26839-E-13 HTP-1 | ELIZABETH MADEWELL
Pauldeep Bains | OBJECTION TO CONFIRMATION OF PLAN BY WESTAMERICA BANK
8-7-14 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overruled the Objection.

Westamerica Bank ("Creditor") opposes confirmation of the Plan. The Creditor limits the objection to those arising in connection with the loan referenced in the proposed Plan as Class 1 "Westamerica Bank/Residence 1st DOT" which was recorded on November 15, 2006 as Instrument No. 200600145337 encumbering property address 1838 Kiddler Avenue, Fairfield, California secured by the Note dated November 7, 2006 in the amount of $100,300.00. Creditor objects on the basis that Debtor's proposed Plan provides for the incorrect post-petition contractual monthly payment amount and the Debtor's proposed Plan

provides for the incorrect arrearage payment amount.

Specifically, Creditor argues that the correct post-petition contractual monthly payment should be $875.89, which includes principal, interest, insurance impounds, and real property tax impounds. The Plan provides for Westamerica Bank/Residence 1st DOT as a class 1 claim with a monthly installment payment at $747.72.

Furthermore, Creditor contends that the correct arrearage amount is $3,690.48 which includes the payments delinquent from March 1, 2014 through June 30, 2014, plus insurance impounds, Freddie Mac required inspection fees and late charges. This would make the arrearages payment $102.52 per month.

However, Creditor does not provide any declarations or exhibits to substantiate these claims. Reviewing the Proof of Claims filed, the court finds that Creditor only filed a Proof of Claim for the other deed of trust Creditor has on the Property, not the deed of trust at issue in this alleged motion. Proof of Claim 3.

The court overrules the Objection. However, the court is denying confirmation based on the Objection filed by the Chapter 13 Trustee. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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 David Cusick, 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 overruled.

28. 14-24645-E-13 ANDREW/KATHLEEN REED MOTION TO CONFIRM PLAN
MLA-3 Mitchell L. Abdallah 7-17-14 [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)(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 July 17, 2014. By the court's calculation, 54 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 First Amended Plan.

Andrew and Kathleen Reed ("Debtor") filed their Motion to Confirm First Amended Chapter 13 Plan on July 17, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

DEBTOR'S MOTION

Debtor filed a Plan on May 29, 2014. Debtor then filed a First Amended Plan on July 17, 2014, due to amendment of schedules and Debtors' Chapter 13 Statement of Currently Monthly Income and calculation of commitment period and disposable income (Form 22c).

In the instant motion, the Debtor alleges that the First Amended Plan is proposed in good faith. Debtor notes that while the original Plan proposed a 36 month plan repaying general unsecured creditors 9.70% of total unsecured

debt, the amendments to Form22c required Debtors to propose a 60 month plan repaying general unsecured creditors 10.09% of total unsecured. The First Amended Plan proposes a monthly plan payment of $148.00 a month. Debtor notes that, while Debtor shows a "monthly net income" on Schedule J of $464.00, Debtor is not committing all of the monthly net income to the plan because Debtor receives $1,646.00 in social security income. Debtor argues that under *In re Welsh*, "the calculation of disposable income or projected disposable income now begins with current monthly income (CMI). There is no dispute that social security retirement income is statutorily excluded from both the calculation fo CMI under 11 U.S.C. § 101(10A) and the calculation of disposable income under 11 U.S.C. § 1325(b)(2) as both calculations are determined by using Official Bankr. Form 22C." *Drummond v. Welsh* (*In re Welsh*), 465 B.R. 843 (B.A.P. 9th Cir. 2012). (Interestingly, Debtor cites the Bankruptcy Appellate Panel decision and not the Ninth Circuit Court of Appeals decision which superceded it. Drummond v. Welsh, 711 F.3d 1120 (9th Cir. 2012).)

Debtor alleges that the First Amended Plan proposes to pay the allowed unsecured claims an amount not less than the unsecured creditors would have received under a Chapter 7. Debtor argues that he has made all payments to the Trustee pursuant to the provisions of the original plan through June 2014.

TRUSTEE'S OBJECTION

David Cusick, Chapter 13 Trustee, ("Trustee") filed an Objection to Debtor's Motion to Confirm First Amended Plan on August 26, 2014.

The Trustee argues that the First Amended Plan does not provide all of the Debtor's projected disposable income for the applicable commitment period and the Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). The Trustee notes that on July 17, 2014, Debtor amended their CMI to show the Debtor as being over median income. Line 59 is now reported as being negative $612.36, indicating that the Debtor's have no monthly disposable income. The Trustee alleges to have reviewed the amended CMI and objects to some of the deductions the Debtor have claimed. Specifically, according the Trustee's review and recalculation of Form B22C, the Statement of Current Monthly Income, Line #59, Debtor's monthly disposable income totals $660.64.

The Trustee points out that on lines #28 and #29, Debtor deducts $517.00 on each line for ownership/lease payments on vehicles but Debtor does not report having any auto payments either inside or outside the Plan. The Trustee argues that the $1,034.00 ($517.00 x 2) should be added back into line #59.

The Trustee alleges that on line #47(a), Debtor deducts $765.00 for ongoing payments to Bank of America, N.A., for a recreation vehicle even though Debtor's Plan calls for the surrender of this vehicle in Class 3. The Trustee argues that the $746.00 should be added back into line #59.

The Trustee argues that because the Debtor was granted their Motion to Value Collateral of Bank of America on July 22, 2014 (Dckt. 63), the $134.00 deduction on line #47(b) should be added back to line #59 since the Debtor are no longer paying that expense.

According to the Trustee, if these "disallowed" deductions are added

back, line #59 would be $1,310. The Trustee notes that the Debtor failed to deduct Debtor's business expenses in the amount of $650.00 per month on the CMI and, taking that into account, brings line #50 to $660.64.

Furthermore, the Trustee points out that the Debtor failed to report their 2013 Income Tax Return as income on Form B22C. The Trustee alleges that the Debtor received $7,974.00 in 2014 for their 2013 Income Tax Return. The Trustee alleges that since the Debtor received the refund within six months of filing their petition on May 1, 2014, it should be added to Debtor's CMI which greatly increases Debtor's disposable income. Additionally, concerning the 2013 Income Tax Return, Trustee argues that if the Debtor contributed their tax refund into their household income at 1/12 per month the value of the return, Debtor would have an estimated additional $662.25 per month which the Trustee argues should be turned over to be paid as an additional payment into the Plan for the benefit of general unsecured claims.

DISCUSSION

As the Supreme Court has made clear, computation of projected disposable income is a prospective projection, not merely the historic pre-petition six month average used for purposes of determining the applicable commitment period. *Hamilton v. Lanning*, 560 U.S. 505 (2010).

The proposed Plan provides for the Debtor to make $1,500.00 a month payments for 36 months. Dckt. 5. The plan payments will be used to cure the arrearage and make the current monthly payments for two claims secured by Debtor's residence. These payments total $1,064.13.

Next, the Plan pays $238.86 a month for the Class 2 tax claim secured by Debtor's residence and to pay the claim secured by a 2009 Chevy. (When added to the mortgage payments, $1,302.99 of the monthly plan payment is utilized.)

The Plan then requires that Debtor's counsel be paid what $83.33 a month for attorneys' fees. The Chapter 13 Trustee fees are project to be $90.00 - $120.00 a month. (With these two amounts, $1,506.32 of the $1,500.00 month plan payment is exhausted.)

Amended Schedule I filed by Debtor computes monthly income as follows:

	Amended Schedule I, Filed July 17, 2014, Dckt. 49
Debtor 1	
Net Business/Rental	$150.00
Social Security	$1,646.00
Pension	$225.00
Debtor 2	

Pension	$4,920.00

Total Combined Monthly Income	$6,941.00

On Amended Schedule J, Dckt. 49, Debtor states monthly expenses of $6,477.090. These expenses include the following, which raise issues of whether such expenses are actually incurred, and if so, whether they are reasonable and necessary expenses:

A. Electricity.....$300.00
B. Cell Phone.....$200.00
C. Internet/Cable.....$150.00
D. Telephone.....$120.00
E. Food/Housekeeping.....$748.00
F. Personal Care Products.....$180.00
G. Medical/Dental.....$300.00
H. Transportation.....$775.00
I. Charitable.....$ 40.00

These comprise $2,813.00 of the expenses. The Debtor also lists $2,314.17 as the mortgage expense (taxes and insurance included).

For the business, Debtor states that there is $800 a month in income and $650 in expenses, yielding $150 a month in net monthly income. Amended Business Income and Expenses, Dckt. 49.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed. The Debtor does not sufficiently provide for or explain the 2013 Income Tax Return, the two vehicle payments, the continued payments to Bank of America, N.A. on Debtor's Form 22B(C), and Debtor's overall disposable monthly income calculation.

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.

29. 14-27045-E-13 HARINDER SINGH
DMA-1 David M. Alden

MOTION TO AVOID LIEN OF SACRAMENTO SIKH SOCIETY BRADSHAW TEMPLE
8-2-14 [15]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Sacramento Sikh Society, Bank of America, N.A., Tri Counties Bank, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 2, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Avoid Judicial Lien is stayed until completion of the Adversary Proceeding for nondischargeability of the debt secured by the judicial lien. A status conference in this Contested Matter will be conducted at 2:30 p.m. on October 15, 2014 (held in conjunction with the status conference in Adversary Proceeding 14-2237).

This Motion requests an order avoiding the judicial lien of Sacramento Sikh Society ("Creditor") against property of Harinder Singh ("Debtor") commonly known as 9012 Sand Field Court, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the

amount of $419,021.22. FN. 1. An abstract of judgment was recorded with Sacramento County on January 21, 2010, which encumbers the Property.

FN.1.
Debtor's Motion to Avoid Lien states that the judgment lien in favor of Creditor is $85,629.51. The Abstract of Judgment offered in support of the Motion states that the judgment is $419,021.22. Exh. B, Dckt. 18. Debtor did not explain the discrepancy between these values, nor is there any support for this value in the record.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $93,333.00 as of the date of the petition. The unavoidable consensual liens total $182,962.51 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

OPPOSITION

Creditor filed opposition to this Motion. Creditor asserts first that Debtor values his interest in the Property as a one-third interest, though as a joint tenant with Debtor's father and wife, his interest is undivided. Creditor also notes that Debtor listed the total bank liens on the property as encumbering his proportionate interest. Creditor also alleges that the total value of the Property is $324,000.00, which, when the total consensual liens are deducted, may leave equity for this lien. Creditor states that because Debtor and his wife are separated, Debtor is only eligible to exempt $75,000.00 in his homestead. Creditor additionally argues that as presumably community property, the Property is subject to liens as a whole, regardless of the proportionate interest of the Debtor.

Debtor filed a response to Creditor, explaining his valuation of the property as a one-third interest at $93,333.00. Debtor provided a copy of the Grant Deed that shows Debtor as a joint tenant with his father and wife.

DISCUSSION

Debtor's valuation of the Property does not properly represent the total fair market value of the property, but only a one-third interest. The value Debtor uses could be discounted for a fractional interest, a post-sale value, or a third of the total fair market value.

However, even assuming that the Creditor's alleged value is correct, there would be no equity in the Property for Creditor's judgment lien. If the Property is worth $324,000.00, Bank of America, N.A.'s first deed of trust in the amount of $87,400.20 must first be subtracted from the total value of the Property. The loan agreement between Bank of America and Debtor and his wife was signed on July 29, 2003, shortly before the Grant Deed was recorded conveying the Property from Debtor and his wife, as joint tenants, to Debtor, his wife, and his father as joint tenants on August 11, 2003. Claim 4; Dckt. 53. This leaves $236,599.80. A one-third interest now is $78,866.60. Tri Counties Bank's deed of trust in the amount of $89,617.03, for Debtor and his wife, must then be subtracted. This lien agreement was signed on September 2,

2004. Claim 3. Because only two of the three joint tenants consented to this lien, it encumbers only two-thirds of the property (a value of $157,733.20). This leaves $68,116.17 in equity for both Debtor and his wife. Thus, Debtor's one-third interest, with his proportionate shares of the consensual liens is $34,058.08. Even if Debtor's maximum homestead exemption is only $75,000.00, the remaining value can be fully exempted, leaving no equity for the Creditor.

STEPS	VALUE
Value of Property	**$324,000.00**
Subtracting Bank of America's First Dead of Trust	($87,400.00)
	$236,599.80
2/3 Value of Property for Debtor and His Wife's Interest	$236,500.80 x 2/3 interest = $157,733.20
Subtracting Tri Counties Bank Second Deed of Trust, held in Debtor and his wife's names	($89,617.03)
	$68,116.17
Debtor's 1/3 Interest in Property Minus First and Second Deeds of Trust	$68,116.17 x 1/2 interest = $34,058.08
Subtracting Homestead Exemption (assuming the lesser $75,000.00 permitted)	($75,000.00)
Remaining Equity for Debtor	($40,941.92) FN.2.

FN.2. This computation is based on the interests of Debtor and the non-debtor spouse not being community property. Even if community property, a $75,000.00 homestead exemption would exhaust the value of the property.

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

The court notes that an adversary proceeding is currently pending between Creditor and Debtor to determine the dischargeability of the debt secured by the lien at issue here under 11 U.S.C. § 523. Adversary Proceeding No. 2014-02237. Bankruptcy courts have held that the decisions over whether a lien is avoidable under 11 U.S.C. § 522(f) and whether a debt is dischargeable under 11 U.S.C. § 523(a) are separate and unaffected by each other. *See In re Slater*, 188 B.R. 852, 857 (Bankr. E.D. Wash. 1995) (stating that Congress intended to allow the avoidance of judicial liens on exempt property even when secured by non-dischargeable debts, as long as the debt is not specifically mentioned in 11 U.S.C. § 552(c)); *In re Ash*, 166 B.R. 202, 204 (Bankr. D. Conn.

1994). At least one court has held the opposite, stating that judgment liens securing otherwise nondischargeable debts are unavoidable. *In re Coffman*, 52 B.R. 667, 670 (Bankr. D. Md. 1985).

In the Ninth Circuit, the Bankruptcy Appellate Panel has discussed whether liens securing nondischargeable debts are avoidable. *S&C Home Loans v. Farr (In re Farr)*, 278 B.R. 171, 181 (B.A.P. 9th Cir. 2002). The Panel agreed with the Third Circuit Court of Appeal's determination that such liens are avoidable under section 522(f) if the lien impairs a debtor's exemption. *Id.* (citing *Walters v. U.S. Nat'l Bank in Johnstown*, 879 F.2d 95, 97-98 (3d Cir. 1989).

Some cases have relied upon Section 522(c) for the proposition that judgment liens may be avoided for some nondischargeable debts. 11 U.S.C. § 522(c) states, with respect to liens,

> "(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except–
>
> ...
> (2) a debt secured by a lien that is--
>
> (A) (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
>
> (ii) not void under section 506(d) of this title; or
>
> (B) a tax lien, notice of which is properly filed;...."

For a judicial lien to be avoided under 11 U.S.C. § 522(f), the Bankruptcy Court provides,

> (f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the **debtor may avoid** the fixing of a **lien** on an interest of the debtor in property **to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection** (b) of this section, if such lien is–
>
> (A) a **judicial lien**, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);...
>
> (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--
>
> (i) the lien;
>
> (ii) all other liens on the property; and

> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
>
> exceeds the value that the debtor's interest in the property would have in the absence of any liens....

11 U.S.C. § 522(f).

Though Congress has established a simple statutory formula to determine whether exemption is impaired and lists only 11 U.S.C. § 523(a)(5), one has to question why a lien for a nondischargeable debt would be avoided, and then the next day a new judgment lien recorded for the nondischargeable debt. There is no advantage to the Debtor, as the Debtor's California exemption protected from the judgment lien continues to be in full force and effect whether it is the pre-petition lien or the post-petition re-recorded judgment lien.

The parties have not addressed this issue for the court. The court will not conduct the research and structure the arguments for the parties. The court also will not blindly avoid liens for what may be a nondischargeable debt based on a pre-petition state court judgment. Before causing the parties to incur the cost and expense of litigating this issue, the court stays the proceedings in this Contested Matter until the Adversary Proceeding to determine whether the debt secured by the judicial lien is nondischargeable.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the proceedings on the Motion to Avoid Judgment Lien are stayed pending completion of Adversary Proceeding 14-2237, Sacramento Sikh Society v. Harinder Singh.
>
> **IT IS FURTHER ORDERED** that a status conference in this Contested Matter will be conducted at 2:30 p.m. on October 15, 2014 (held in conjunction with the status conference in Adversary Proceeding 14-2237).

30. 14-27045-E-13 HARINDER SINGH
DPC-1 David M. Alden

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
8-13-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, Chapter 13 Trustee, ("Trustee") opposes confirmation of Harinder Singh's ("Debtor") Plan on the basis that:

1. Debtor filed the case as a "veiled Chapter 7 case" since it proposes to pay nothing to secured claims or unsecured claims, except for Debtor's attorney;

2. Debtor cannot afford to make the payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the Motion to Avoid Lien (Dckt. 15);

3. The attorney fees listed in the Plan does not include attorney services that are required under LBR 2016-1(c), such as relief from stay actions; and

4. The Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b) because it does not provide an increase in plan payments once the Debtor's children support obligations are complete and the Debtor's petition does not reflect rental income from Debtor's mother and father.

Debtor responded to the objection arguing: (1) the dischargeability of Creditor's judicial lien is currently in litigation so the argument is not ripe; (2) under the doctrine of joint and several liability, the Debtor is obligated for the full amount owed to the senior liens on the Property; (3) the Debtor is a joint tenant, holding only a one-third interest in the Property; (4) assuming that the value of the Property is $320,000.00, the Debtor's interest will still have negative equity due to the senior liens and the exemption taken; (5) Debtor is not manipulating the Bankruptcy Code to "strip" a second deed of trust so Debtor is not "disguised Chapter 7 case;" and (6) the Family Support Order which orders that Debtor pays family support is properly reflected in the Plan. FN.1.

FN.1. The court notes that this is an exact copy of Debtor's response to Sacramento Sikh Society Bradshaw Temple's Objection to Confirmation of Plan, including the title of the response.

Upon review of the motion, declarations, objections, responses, and exhibits, the court finds that the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The Plan does not appear to be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is not providing all of his disposable income to the Plan. In Debtor's Schedule J, Debtor states that he is paying $2,227.68 in mortgage payments on the Property. Dckt. 1. This monthly payment appears to be the full monthly payment on the Bank of America mortgage, which according to Bank of America's proof of claim is $2,227.68. Claim 4.

If the Debtor is only a one-third joint tenant in the Property, the Debtor has not explained or provided justification on why the Debtor is paying for the entirety of the mortgage. Furthermore, Debtor's Schedule J shows utility expenses that appear to once again cover the entirety of the bills on the Property. The bankruptcy estate should not be diminished by the Debtor paying the entirety of the bills on the Property as only a one-third joint tenant. The bankruptcy estate may in fact have a cause of action against the other two co-tenants for contribution and surcharge on their interest on the Property.

Additionally, Debtor fails to list the supplemental rental income from Debtor's parents. While the Debtor admitted to such income, it does not appear to be reflected in Debtor's petition or Plan.

The Plan does not provide for any distribution to secured or unsecured creditors even though the Debtor is continuing to pay the full amount of expenses and mortgages on the Property. The only "creditor" paid in the plan is Debtor's counsel. This is per se evidence of the Debtor not having a showing of best effort required under 11 U.S.C. § 1325(b).

The Plan does not discuss the Family Support Order and does not provide evidence on the judgment nor the amount owed monthly. Debtor's blanket response that it is reflected in the Plan without providing for the specifics of the order nor any adjustments for when the support obligation extinguishes is insufficient. While the Debtor did provide the stipulation from the state court, the Debtor's Plan does not reflect an increase in payment under the plan once one of the conditions precedents extinguishes Debtor's obligations.

Debtor's response does not adequately explain any of the objections raised by the Trustee. Instead, the Debtor simply make conclusory statements hoping to satisfy the court. However, without providing justification or supplemental amendments to the Plan or petition correcting Trustee's proper objections, the Plan will not be confirmed.

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

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

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

31. 14-27045-E-13 HARINDER SINGH
MHK-1 David M. Alden

OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO SIKH SOCIETY BRADSHAW TEMPLE
8-13-14 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Sacramento Sikh Society Bradshaw Temple ("Creditor") opposes confirmation of the Plan on the basis that: (1) Debtor does not provide for treatment of Creditor's judicial lien in the plan and that the judicial lien is nondischargeable (currently being litigated in Adversary Proceeding No. 2014-02237); (2) Debtor's plan is based on a motion to avoid Creditor's judgment lien; (3) Debtor's motion to avoid the judgment lien and his plan are based on valuing his interest in his residence at 9012 Sand Field Court,

Sacramento, California (the "Property") as a one-third interest but then charging that interest with the full amount of the senior liens; (4) Debtor lists the value of the Property at $280,000.00 when Zillow estimates the value of the Property at more than $320,000.00; (5) Debtor lists wages of more than $10,000.00 per month, but proposes a plan that provides for no payments to secured or unsecured claims and appears Debtor has filed a "disguised Chapter 7 case;" and (6) Debtor has failed to explain adequately his family support and expense situation, so Debtor's plan is not his best effort under 11 U.S.C. § 1325(b).

Debtor responded to the objection arguing: (1) the dischargeability of Creditor's judicial lien is currently in litigation so the argument is not ripe; (2) under the doctrine of joint and several liability, the Debtor is obligated for the full amount owed to the senior liens on the Property; (3) the Debtor is a joint tenant, holding only a one-third interest in the Property; (4) assuming that the value of the Property is $320,000.00, the Debtor's interest will still have negative equity due to the senior liens and the exemption taken; (5) Debtor is not manipulating the Bankruptcy Code to "strip" a second deed of trust so Debtor is not "disguised Chapter 7 case;" and (6) the Family Support Order which orders that Debtor pays family support is properly reflected in the Plan.

Upon review of the motion, declarations, objections, responses, and exhibits, the court finds that the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The Plan does not appear to be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is not providing all of his disposable income to the Plan. In Debtor's Schedule J, Debtor states that he is paying $2,227.68 in mortgage payments on the Property. Dckt. 1. This monthly payment appears to be the full monthly payment on the Bank of America mortgage, which according to Bank of America's proof of claim is $2,227.68. Claim 4. If the Debtor is only a one-third joint tenant in the Property, the Debtor has not explained or provided justification on why the Debtor is paying for the entirety of the mortgage. Furthermore, Debtor's Schedule J shows utility expenses that appear to once again cover the entirety of the bills on the Property. The bankruptcy estate should not be diminished by the Debtor paying the entirety of the bills on the Property as only a one-third joint tenant. The bankruptcy estate may in fact have a cause of action against the other two co-tenants for contribution and surcharge on their interest on the Property.

The Plan does not provide for any distribution to secured or unsecured creditors even though the Debtor is continuing to pay the full amount of expenses and mortgages on the Property. The only "creditor" paid in the plan is Debtor's counsel. This is per se evidence of the Debtor not having a showing of best effort required under 11 U.S.C. § 1325(b).

The Plan does not discuss the Family Support Order and does not provide evidence on the judgment nor the amount owed monthly. Debtor's blanket response that it is reflected in the Plan without providing for the specifics of the order nor any adjustments for when the support obligation extinguishes is insufficient. FN. 1.

FN.1. The other grounds in which the Creditor objects, most notably the valuation of the Property, is not relevant for the objection to confirmation. Those concerns are addressed in Debtor's Motion to Avoid Lien. Dckt. 15.

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

32. 14-27045-E-13 HARINDER SINGH
PD-1 David M. Alden

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
8-14-14 [32]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Bank of America, N.A. ("Creditor"), which identifies itself as the secured creditor of the Debtor, Harinder Singh ("Debtor"), objects to the proposed Chapter 13 Plan. The Creditor opposes confirmation of the Plan on the basis that Debtors' Chapter 13 Plan does not properly provide for Creditor's claim-specifically, that Debtor's Plan fails to provide for a cure of Creditor's pre-petition claim in full. Additionally, Creditor argues that the Debtor incorrectly categorizes Creditor's claim in class 4 of the Chapter 13 plan although Creditor's claim matures during the life of the Chapter 13 Plan.

Creditor's claim is evidenced by a promissory note executed by Debtor Harinder Singh and Anita Singh and dated July 29, 2003, in the original principal sum of $251,500.00 (the "Note"). Pursuant to the Note, the full balance of the loan comes due and payable on August 1, 2018. See Exhibit A, Dckt. No. 34.

The Note is secured by a deed of trust encumbering the real property commonly known as 9012 Sand Field Court, Sacramento, California. Subsequently, the Note was indorsed in blank, thereby converting the Note to a bearer instrument. Creditor, directly or through an agent, is in possession of the original promissory note indorsed in blank. Exhibit A, Dckt. No. 34.

The Creditor states that it is in the process of finalizing its proof of claim for this matter and estimates that its total secured claim is in the approximate amount of $87,400.20 and that its pre-petition arrearage claim is in the approximate amount of $2,567.34, representing: one pre-petition payment totaling $2,227.68; and an escrow shortage in the amount of $339.66. The Proof of Claim was filed on August 15, 2014 - Proof of Claim No. 4. The Proof of Claim is prima facie evidence of the obligation owed to creditor. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Creditor states that the Debtor's Plan cannot be confirmed under 11 U.S.C. § 1326(a)(5) because it fails to properly provide for the cure of Creditor's pre-petition arrears. Creditor's claim for pre-petition arrears is asserted to be in the total amount of $2,567.34. However, the Debtor's Chapter 13 Plan fails to provide for payment of the pre-petition arrears on Creditor's secured claim.

11 U.S.C. § 1322(b)(5) of the Bankruptcy Code provides for the curing of any default on a secured or unsecured claim on which the final payment is due after the proposed final payment under the plan. Debtor's Plan does not provide for the curing of these arrears. Creditor asserts that Debtor will have to increase the monthly payment through the Chapter 13 Plan to Creditor to approximately $42.79 in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months.

Debtor's Chapter 13 Plan also propose to treat Creditor's claim as a Class 4 claim. However, Class 4 claims are reserved for claims that mature after the completion of the plan, are not in default, and are not modified by the plan. As there are pre-petition arrears and the maturity date of the Subject Loan is August 1, 2018 (within the life of the proposed plan), Creditor's claim should not be treated as a Class 4 claim.

RESPONSE BY DEBTORS

Harinder Singh, the Debtor in the proceeding captioned above, responds to the Objection by Bank of America, N.A. ("Bank of America"), and offers to resolve said objection by stipulation, described as follows: Debtor agrees to reclassify the Bank of America claim to be a Class 2A claim, to fully satisfy said claim during the chapter 13 commitment period. Debtor has reviewed Bank of America's claim (Claim 4 filed August 15, 2014), which shows the "Amount of Secured Claim" to be $87,400.20. Debtor proposes to cure the pre-petition arrears and fully satisfy the outstanding balance of said claim, during the

pendency of his Chapter 13 Plan, by adding the following language to the order confirming plan:

> "Paragraph 1.01 (Monthly plan payments) shall be $63.63 for the first month (previously paid); increasing to $2,291.311 per month for the remainder of the commitment period, months two (2) through sixty (60);
>
> "The claim of Bank of America is reclassified from Class 4 to Class 2A. The amount of the Class 2A claim is $87,400.20. The interest rate is 4.375%. The monthly dividend shall be $1,700.00."

The additional funding to debtor's proposed plan, even after the trustee's disbursement to the Bank of America claim, will increase the dividend to the unsecured creditors. Additionally, this stipulation acts to resolve objections to the originally proposed fee-only plan. By reorganizing the 1st deed of trust, the proposed plan, as amended in the order confirming plan, will no longer be a fee-only plan.

The Debtor proposing to add language to the order confirming that would reclassify the Bank of America claim to be a Class 2 Creditor, and cure the pre-petition arrears and fulfill the outstanding balance of the claim.

However, the court notes in this Debtor's case, both Creditor Sacramento Sikh Society, Bradshaw Temple, and the Chapter 13 Trustee have filed opposition to the proposed plan, Dckt. Control Nos. MHK-1 and DPC-1, raising objections to Debtor's Plan on multiple grounds, which include: the plan's failure to provide for any secured claims or unsecured claims, except for Debtor's attorney; the plan's failure to meet 11 U.S.C. § 1325(a)(6) because of the Plan's reliance on a denied Motion to Avoid Lien; the plan not representing Debtor's best effort under 11 U.S.C. § 1325(b) because it does not provide an increase in plan payments once the Debtor's children support obligations are complete; the Debtor's failure to include rental income from Debtor's mother and father in his petition, and more. Those objections are being sustained by the court on this hearing date. The court determining that the proposed plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) on the basis of Creditor and the Chapter 13 Trustee's objections, the plan is not confirmed at this time.

The Debtor being unable to confirm a Plan which includes the proposed amendment, the Objection is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 Objection is sustained.

33. 14-28348-E-13 **CAROLYN WILLIAMS** **MOTION TO EXTEND AUTOMATIC STAY**
MET-1 **Mary Ellen Terranella** **8-18-14 [8]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Debtor Carolyn Williams ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. No. 10-400069-B-13J) which was

filed on July 29, 2010, and dismissed on or about July 15, 2014, after Debtors defaulted under her plan payments. *See* Order on Motion/Application to Dismiss Case for Failure to Make Plan Payments, Bankr. E.D. Cal. No. 10-40069, Dckt. 139, July 15, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor states that her previous case was dismissed because she did not timely respond to the Trustee's Notice of Default and Application to Dismiss Case, as her mortgage lender had not finalized her loan modification. The Debtor filed a Motion to Modify Plan in response to the Trustee's Notice of Default and Application to Dismiss Case, which was dependent upon a motion to approve a loan modification. After the case was dismissed, the loan modification was finalized.

Debtor testifies in her declaration, Dckt. No. 10, that she has maintained the two jobs that she was working during her previous case. The loan modification reduced her mortgage payment. Debtor states that although she now has her daughter and two grandchildren residing with her, her plan payment is less than those that were called for in her previous case, in part due to the significant payments she made in the four years of her previous plan. Debtor argues that the extension of the automatic stay is necessary in protecting her family home.

Debtor asserts that she has demonstrated good faith in the filing of her new case. She states that her income is stable, her plan payment is less than that of her pervious case, and her mortgage loan has been successfully modified.

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

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

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

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

34. 12-38452-E-13 CAH-1 — RICHARD/CHRISTINA MERCADEL — Aaron C. Koenig — MOTION TO MODIFY PLAN — 7-15-14 [33]

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 15, 2014. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

35. 14-21955-E-13 AEB-5 — STEVEN/DEBRA RAZWICK — Andrew E. Bakos — MOTION TO CONFIRM PLAN — 7-25-14 [81]

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 25, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 25, 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.

36. 14-27755-E-13 **ANTHONY FURR** **MOTION TO EXTEND AUTOMATIC STAY, MOTION TO DETERMINE STATUS OF** § 1301 STAY, AND/OR MOTION TO MODIFY IN REM ORDER 8-12-14 [24]
RJ-2 **Richard Jare**

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2014. By the court's calculation, 13 days' notice was provided.

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

The Motion to Extend the Automatic Stay is ----------.

Debtor, Anthony I. Furr, moves the court for an Order Extending the Automatic Stay, Determining the Status of the 11 U.S.C. § 1301 Stay, and Modify or vacate the In Rem Order granting relief from automatic stay in the Debtor's prior case.

This motion is for relief against PennyMac Holdings, LLC, rather than as against all creditors. This was the representation made in the motion

initially filed on August 12, 2014, which was a skeletal motion filed by Debtor's attorney, Richard Jare, when Mr. Jare was traveling abroad and filed a preliminary motion to put parties on notice immediately that this relief is being sought. Dckt. No. 24.

Debtor states that a Motion to Value the Secured Claim of PennyMac Holdings, LLC, was served and filed on August 5, 2014. PennyMac Holdings, LLC, received actual notice of the filing of the case, no later than a short number of days after August 5. Debtor asserts that it could have known about the present bankruptcy filing "long before August 5th." On August 7, 2014, the bankruptcy noticing center filed a proof of service of the notice of commencement.

On August 18, PennyMac Holdings, LLC counsel, filed a pleading in this case. Debtor states that the equities favor him; there was no reason that PennyMac Holdings, LLC, could not avoid cumbersome litigation and issues and uncertainty surrounding the *In Rem Order* pursuant to 11 U.S.C. § 362(d)(4). Debtor states that it had alternative remedies which would remove legal uncertainties, and that Creditor could have made a motion to seek an adequate protection order, and in that event the Debtor may very well have consented to the imposition of adequate protection payments. Debtor states that such a motion could have certainly been before the court on this hearing date.

The Motion states that, while PennyMac Holdings, LLC, has been subjected to several bankruptcy filings concerning this collateral and Debtor, this is the only filing that has been handled by an attorney. The Debtor tried the same "rehabilitation approach in the most recently dismissed Chapter 13, but the Debtor faults the court, trustee, and PennyMac Holdings, LLC, for not understanding that the Debtor sought to cram down the subject claim pursuant to 11 U.S.C. § 506(a).

The Motion asserts that once PennyMac Holdings, LLC, appraises the property, it will realize "how low the value of this condemned property is," and why it is "probably better" to give the property to the Debtor rather than obtain an objection from state court requiring its historic renovation by an owner.

The Motion further states that for sentimental reasons, Debtor would like to pay PennyMac Holdings, LLC, the allowable secured claim through a Chapter 13 Plan to circumvent litigation regarding the issues which Debtor raised in his prior case. Debtor had asserted various arguments about transferring the subject property an ownership dispute with Movant, chain of title and assignment issues, and issues with MERS. A potentially invalid non-judicial foreclosure would not preclude the Debtor from seeking valuation of the secured claim. The Debtor still maintains that there is a broken chain of title in the assignment of the Deed of Trust and Note to PennyMac Holdings, LLC. The Debtor believes that he can confirm a plan and pay PennyMac Holdings, LLC, its secured claim.

The Chapter 13 Plan is also a good forum, asserts Debtor, to raise affirmative defenses of state law in the collection of the claims. Debtor filed this instant Chapter 13 bankruptcy case on July 30, 2014. In Debtor's prior case, the court entered an In Rem Order pursuant to 11 U.S.C. § 362(d)(4) for Relief from the Automatic Stay in favor of PennyMac Holdings, LLC, in Case

No. 14-22297-E-13C, DCkt. No. 71. PennyMac Holdings, LLC, recorded this order on August 4, 2014. Debtor filed an appeal of that order on August 11, 2014; Debtors' attorney states that he suspects the appeal will place some focus on the failure to recognize in the prior case that the Debtor sought a 506(a) valuation.

The Motion states that the Debtor is willing to entertain a discussion as to adequate protection disbursements, and the fee simple in the property has been transferred to the debtor by his wife. The Motion states that the sequence of events differs from the 9th Circuit case of *In re Alakozai*, 9th Cir. B.A.P., 13 C.D.O.S. 11613. The In Rem Order for Relief in that case was recorded prior to the Debtor's filing of a new bankruptcy case. 11 U.S.C. § 362(d)(4), the Motion asserts, only affects the 11 U.S.C. § 362(d) Automatic Stay.

The Debtor's wife, Sarah Straton, is personally liable on the PennyMac Holdings, LLC Deed of Trust obligation. Consequently, Debtor asserts that the 11 U.S.C. § 1301 Co-debtor stay remains in place in the present filing. Debtor prays for an order specifying that the co-debtor stay is in fact in place. The prior case could not be prosecuted effectively, as the hoped for cram down under 11 U.S.C. § 506(a) suffered a potential Achilles heel: the Debtor only has 50% of the fee simply legal title. This has been rectified now, Debtor states. Because the bankruptcy case had already been dismissed in the prior instance, the order purports on its face to vacate an automatic stay which no longer exists. Debtor believes that the appropriate order would be that the motion is moot because there is no stay to vacate.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

While counsel seeks to divorce himself from the prior bankruptcy filings, the Debtor cannot. These prior filings and the conduct of Debtor were sufficient to convince the court that an "in rem" order granting relief from

the automatic stay pursuant to 11 U.S.C. § 362(d)(4 based on a finding that the bankruptcy filings were part of a scheme to hinder, delay or defraud the creditor. Now, Debtor is seeking to have the automatic stay reimposed for only one creditor – the one who obtained the 11 U.S.C. § 362(d)(4) order based on the Debtor having a scheme to use bankruptcy filing to hinder, delay, or defraud this creditor.

In considering what is actually alleged in the Motion, the court finds the following "grounds" very significant,

A. Relief is sought only against PennyMac Holdings, LLC (the creditor holding the 11 U.S.C. § 362(d)(4) order).

B. Debtor has filed a motion to value the secured claim of PennyMac Holding, LLC.

C. PennyMac Holding, LLC could (somehow) avoid cumbersome litigation and issues surrounding the 11 U.S.C. § 362(d)(4) order of this court.

D. Rather than seeking (and enforcing its rights) to obtain an 11 U.S.C. § 362(d)(4) order, PennyMac Holding, LLC could have obtained (forced the Debtor) an adequate protection order.

E. While PennyMac Holding, LLC has been subjected to several bankruptcy filings by Debtor, this is the only filing by the Debtor handled by an attorney. (The motion fails to note that the Debtor himself is a former licensed California Attorney - Cal Bar. No. 61204, termination of license May 11, 2007. http://members.calbar.ca.gov/fal/Member/Detail/61204.)

F. "The primary changed circumstance"is that Debtor is now represented by an attorney.

G. Debtor tried the same "rehabilitation approach" in the prior case which was dismissed, but "[t]he court and the trustee and PennyMac Holdings, LLC did not seem to understand that debtor sought to cram down PennyMac Holdings, LLC's claim pursuant to § 506(a)...."

H. Only once PennyMac Holdings, LLC appraises the property will it realize how low the value is, "[p]robably better to simply give it to the Debtor rather than impose upon itself as owner for the Superior Court injunction requiring its historic renovation by any owner."

I. The property is of sentimental [and apparently not of any economic] value to the Debtor.

J. If the court reimposes the stay and PennyMac Holding, LLC realizes that it should give the property to Debtor, then it can avoid "[p]rotracted litigation as to issues which the Debtor raised in the prior case...." These include disputes over ownership of the note, assignments, and MERS.

K. Debtor would like the court to value the property, even if PennyMac Holdings, LLC were to foreclose, Debtor believing that there is a "broken chain of title in the assignment of the Deed of Trust and Note...."

L. Debtor concludes that he believes he can confirm a plan.

M. Apparently more importantly, Debtor believes that bankruptcy is a more convenient forum to raise his contentions against PennyMac Holdings, LLC.

N. The court should "reconsider" its determination that the bankruptcy filings were part of a scheme to hinder, delay, or defraud creditors as provided in 11 U.S.C. § 362(d)(4). (No motion to reconsider has been filed, and the Motion references that an appeal of the court's order under § 362(d)(4) has been appealed.)

O. References is made to Debtor's wife having an interest in the property, and requests a declaration that the co-debtor stay of 11 U.S.C. § 1301 should apply. [In Debtor's prior case, 14-22297, Dckt. Debtor stated under penalty of perjury that he has no spouse, listing Sara Straton as a former spouse. Question 16, Statement of Financial Affairs. In Debtor's former case he removed the state court dissolution, property division action which Sara Straton had commenced against him. Adv. Pro. 12-2677. However, in prior case 12-28240 (Dckt. 13) Debtor listed Sara Straton as his current spouse in response to Question 16 of the Statement of Financial Affairs.]

P. Debtor argues that he did not appear at the hearing on the motion for relief pursuant to 11 U.S.C. § 362(d)(4), though he had filed an opposition, because the court had dismissed the bankruptcy case. He asserts that a "plausible" reading of 11 U.S.C. § 362(d)(4) is that it cannot be invoked if the Debtor has dismissed the case or it has been dismissed by the court for cause.

Q. Because the Ninth Circuit Court of Appeals has not yet ruled on the effect of 11 U.S.C. § 362(a)(3) stay, it would be "prudent for the debtor to have the stay extended by order of the court."

Motion, Dckt. 40.

Debtor provides his declaration in support of the Motion. Dckt. 41. He believes that he made substantial payments and progress in the prior case. The shortcoming was that he owned only 50% of the interests in the property, with Sara Straton owning the other 50%. Debtor continues to believe, and states under penalty of perjury that the real property securing the PennyMac Holdings, LLC claim has a value of $0.00. Thus, he should be able to value the PennyMac Holdings, LLC secured claim at $0.00 and retain the property through

a plan which pays PennyMac Holdings, LLC $0.00 for its interest in that property.

The Declaration continues to explain Debtor's contention that he and Sara Straton were victims of predatory lending and his belief that they have non-bankruptcy claims against various persons.

Debtor has filed a Plan in this case which provides for a $730.00 a month plan payment. Plan, Dckt. 10. For the Class 2 Claims, Debtor proposes to pay $32,000.00 at 5% interest over a five year plan to PennyMac Holding, LLC for its asserted $840,465.44 claim. No other creditors exist to be paid, other than making a 100% dividend for $6.00 of general unsecured claims and payment of $1,104.00 to the California State Board of Equalization for a Class 5 priority claim.

On Schedule I, Debtor lists having income of only $1,159.00. He also lists his non-filing spouse having monthly take-home income of $7,600.00. In the Motion and Declaration Debtor states that his non-filing spouse is seeking the benefit of the co-debtor stay since she has liability on the debt asserted by PennyMac Holdings, LLC. On Schedule J, Debtor computes having only $730.00 in Monthly Net Income from which to fund a plan. If Debtor is wrong and he, and Sara Straton, owe PennyMac Holdings, LLC on the debt, he is unable to provide for that in a plan or to set aside the necessary monthly payment amounts for the court to use as a self funded bond in lieu of imposing an injunction bond pursuant to Federal Rule of Civil Procedure 65(c) and Federal Rule of Bankruptcy Procedure 7065.

What Debtor makes clear is that he has a non-bankruptcy dispute with PennyMac Holdings, LLC and he wants to litigate that non-bankruptcy dispute. Notwithstanding his prior failures, he argues that because he now has a bankruptcy attorney, the automatic stay should be imposed to stop PennyMac Holdings, LLC from enforcing its asserted rights under the Note and Deed of Trust. If only PennyMac Holdings, LLC will capitulate to the demand of Debtor to release this property that is worth nothing, then Debtor will stop with what he sees as protracted litigation over property worth nothing.

Debtor has not overcome the presumption that the repeat filing is in bad faith. He has not shown grounds for the court to impose a stay and countermand the order in the prior case issued pursuant to 11 U.S.C. § 362(d)(4). All Debtor has shown is that he wants to fight with PennyMac Holdings, LLC, that he has no reorganization or rehabilitation to pursue under the Bankruptcy Code, and that he wants to use the automatic stay as a "free, indefinite injunction."

While Debtor prefers to argue his issues in the bankruptcy court, the Bankruptcy Code and federal court jurisdiction pursuant to 28 U.S.C. § 1334 were not created as a sham device to take cases away from the state court of general jurisdiction or when proper, non-bankruptcy federal court jurisdiction exists for the district courts.

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). Before a federal

court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

> Sec. 2, Cl 1. Subjects of jurisdiction.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo,* 82 F.2d 121, 121-122 (9th Cir. 1936),

> Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458, 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a "case" or "controversy," within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

Debtor is free to commence suit in either the California Superior Court (general jurisdiction) or the United States District Court (if the proper case or controversy exists) to initiate his battle with PennyMac Holdings, LLC (and whomever else he believes is indebted to him). He can obtain the appropriate injunction in that court, with the posting of whatever bond is required (which may be waived by such court) based on the actual claims that Debtor is prosecuting.

Debtor has demonstrated that he is not prosecuting any reorganization or rehabilitation under the Bankruptcy Code – but merely that he "prefers" to litigate his issues in the bankruptcy court (with, coincidentally, the automatic stay serving the function of a preliminary injunction).

Debtor also has demonstrate a litigation strategy of just through multiple requests for relief, without providing any legal basis, in a motion, throwing it against the wall and hoping the court will either be confused enough to grant some relief or state the case for Debtor. First, the current Motion can be read to (1) impose the automatic stay pursuant to 11 U.S.C. § 362(d)(4) [unnumbered paragraph following subparagraph § 362(d)(4)(B)], (2)

grant relief pursuant to 11 U.S.C. § 362(c)(3)(B), vacate pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 the order granting relief pursuant to 11 U.S.C. § 362(d)(4) in case number 14-22297 [though the motion is being filed in case 14-27755], (3) declaratory relief as to the effect of 11 U.S.C. § 1301 [co-debtor stay for consumer debts], or (4) declaratory relief as to the effect of 11 U.S.C. § 362(c)(3) termination of the automatic stay.

The Supreme Court and Rules Committee did not include the provisions of Federal Rule of Civil Procedure 18 (allowing multiple claims against an opposing party in adversary proceedings) into the Contested Matter proceedings (all non-adversary proceedings matters). See Federal Rule of Bankruptcy Procedure 7018 and 9014. The fast law and motion practice in bankruptcy court is not one in which multiple claims are mashed together and dumped on the opposing party and the court.

The present Motion also consists of a series of conclusions and arguments of what Debtor believes is proper. No points and authorities has been filed. Rather, it appears that the Motion is merely a "wish list" presented for the court to grant, Debtor having assigned to the court the task of providing the legal research and drafting of a points and authorities.

Debtor has not show a basis for imposing an automatic stay, extending an automatic stay, or creating an automatic stay in this case. Debtor has not rebutted presumptions of bad faith arising under 11 U.S.C. §§ 362(c)(3)(A). Debtor has not shown changed circumstances sufficient to justify imposing a stay pursuant to 11 U.S.C. § 362(d)(4)(unnumbered paragraph after § 362(d)(4)(B)). Merely because Debtor's wife, or ex-wife, with whom he has been working to assert this dispute with PennyMac Holdings, LLC has transferred her 50% interest in the property is not a changed circumstance with respect to prosecuting a bankruptcy case. Further, no good cause has been shown by Debtor. What he has shown is that he wants to use the automatic stay as an injunction, with no bankruptcy plan of reorganization or rehabilitation prosecuted. Debtor has no other creditors provided for (except for the $1,000 tax claim and $6.00 unsecured claim) in the plan.

The Motion is denied.

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

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

37. 10-40257-E-13 MATT BRIDGES AND KATHY PERRY-BRIDGES
PGM-1 Peter G. Macaluso

MOTION TO MODIFY PLAN
7-30-14 [77]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2014. By the court's calculation, 41 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. Here, the Chapter 13 Trustee opposes the confirmation of the proposed plan on two grounds.

First, there appears to be a discrepancy in the total amount owed for post-petition arrears. The Debtors are proposing one post-petition payment of $1,882.99 to be paid as a Class 1 Creditor. The Trustee's records reflect an outstanding amount of $57.89 in post-petition arrears.

Second, the Trustee is uncertain if attorneys fees remain to be paid. Section 2.06 of the proposed modified plan lists additional fees for attorney's fees to be paid through the plan in the amount of $1,000 apx. According to the

Trustee's records, the prior attorney handling this case has been paid in full. The current attorney of record has not filed a motion for additional fees.

RESPONSE BY DEBTORS

Debtors respond by stating that the proposed plan was prepared on July 24, 2014. At the time, the Trustee system did not reflect the payment made by the Debtors on July 25, 2014 in the amount of $6,320.00.

Therefore the Trustee is correct that there is now only a minimal post-petition payment due of $57.89. Debtors request this be corrected in the Order on Motion to Modify to not further delay disbursements to the Creditors.

Debtors also state that the conclusion of this matter or within 15 days, Counsel will be filing a Motion for Attorney's fees of approximately $1,000.00.

The modified Plan, amended to state the correct amount due in post-petition arrearage, complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 30, 2014, amended to correctly state the amount of post-petition arrears being paid to the Class 1 Creditor as $57.89 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.

38. 13-31661-E-13 CHARLES/CANDICE WORCH
SDH-8 Scott Hughes

MOTION FOR COMPENSATION FOR SCOTT D. HUGHES, DEBTOR'S ATTORNEY(S).
8-4-14 [74]

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 the Chapter 13 Trustee, all creditors, 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 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 denied without prejudice.

FEES REQUESTED

Scott Hughes, the Attorney ("Applicant") for Debtors Candice Worch and Charles Worch ("Clients"), makes a Request for the Allowance of Fees and Expenses in this case.

The Applicant has served as attorney for the Debtors since March of 2010. On March 10, 2010, the Applicant received a retainer of $974.00. On or about August 15, 2013, the debtors agreed to retain Applicant to file their Chapter 13 case for $4,000.00. A copy of the Retainer Agreement is filed separately with this Declaration of Scott Hughes as Exhibit "A," Dckt. No. 46.

Applicant states that he received $4,000.00 up-front, and filed a Rights and Responsibilities of Chapter 13 Debtors and their Attorney's on September 5, 2013. As of the date of this declaration, Applicant states that he has not received any additional fees from the Trustee through the plan.

Applicant brings this motion, pursuant to 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016(a) for $3,500 in additional fees, and $38.70 in additional expenses, on the basis that the initial agreed upon fee was not sufficient to fully compensate the Applicant for legal services rendered. As of July 15, 2014, fees in the amount of $0.00 have been paid by the Chapter 13 Trustee through the Debtors' Chapter 13 Plan.

The Declaration of Scott Hughes, Dckt. No. 77, states that Applicant e-mailed a copy of this fee application to the debtors to sign and approve on July 16, 2014. They signed and approved it as shown in Exhibit "B," Dckt. No. 76. Applicant also served a copy of it on his clients again as is shown in the proof of service filed with the fee application. Applicant states that he and his clients these additional fees at length and "they approved them." Applicant further states that he does not use legal timekeeping software, and simply inputs the hours into Microsoft Word as Applicant performed the work, so that the time is kept contemporaneously with the work actually done.

The Chapter 13 Trustee filed a statement of non-opposition on August 26, 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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including additional work Applicant performed in objecting to all the claims beyond the Statute of Limitations in Debtors' case, and to object to the mortgage claim for post-petition fees and expenses. Applicant states that the result of his additional work is that most of the unsecured claims in this case have been disallowed, and the mortgage lender withdrew its' claim for post-petition fees and expenses. Counsel claims that the debtors will be able

to complete their 100 percent chapter 13 and receive a discharge in less than 60 months.

SET FEES UNDER LOCAL BANKRUPTCY RULE 2016-1

Local Bankruptcy Rule 2016-1 allows for additional fees above the set fee amount only for substantial, unanticipated services provided, not merely because in retrospect Counsel does not fee that the set fee he elected to take was not as advantageous as it appeared previously. L.B.R. 2016-1(c)(3).

In this case, Debtors paid Counsel $4,000 prior to the filing of the bankruptcy. *See* Order Confirming Chapter 13 Plan, Dckt. No. 25. The Order Confirming Plan dated November 22, 2013, states the following:

> IT IS FURTHER ORDERED that the attorneys's fees for the debtors' attorney in the full amount of $4,000 are approved, $4,000.00 of which was paid prior to the filing of the petition. The balance of $0.000 provided that the attorney and debtors have complied with Local Bankruptcy Rule 2016-1(c), shall be paid by the trustee from plan payments at the rate specified in the confirmed plan.

Order Confirming Debtors' Chapter 13 Plan Filed November 22, 2093. Dckt. No. 25. The order confirming the Debtors' Chapter 13 indicates that this is a "set fee" case; the fees of $4,000.00 were awarded under Local Bankruptcy Rule 2016-1, which provides in pertinent part,

> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

(4) If an attorney elects to be compensated pursuant to Subpart (c) but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court.

(5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

At the times relevant to this Motion the Local Bankruptcy Rule provided for a maximum of $4,000 in fixed fees in non-business Chapter 13 cases. The Fixed Fee compensation covers the activities of counsel through the debtor obtaining the discharge in the case. The Local Rules provide for additional fees for substantial and unanticipated additional services which may be required. Completing Chapter 13 Plan as confirmed, reviewing the Trustee's proposed final accounting and making sure that the debtor's discharge entered are included in the Fixed Fee.

In addition to Local Bankruptcy Rule 2016-1, 11 U.S.C. § 329 provides that the court may review all transactions between a debtor and counsel during the one-year period prior to the commencement of the case and during the case, and cancel any agreement for fees or order the return of fees that exceed the reasonable value of the services provided.

As Local Bankruptcy Rule 2016-1(c)(3) makes clear, once the fees permitted in a fixed fee case have been exhausted, the court will not automatically approve a motion for additional fees under this Subpart. If the prior set fees are not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees, but only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Local Bankruptcy Rule 2016-1(c)(3).

Here, Debtors' counsel makes no showing that the services for which additional fees are requested, constitutes substantial and unanticipated post-confirmation work. Applicant provides no description of the services rendered in the body of the Motion (which merely lists the amounts charged). Dckt. No. 74. In his Memorandum of Points and Authorities filed in Support of the Motion, Dckt. No. 78, Applicant describes the nature, extent, and value of services performed as such:

> Counsel for the debtors has undertaken the following acts: Communicated with the debtors regarding their rights and responsibilities with their creditors, regarding objecting to claims beyond the Statute of Limitations, regarding objecting to claims for post-petition mortgage fees and expenses, regarding getting served and stopping two lawsuits, and regarding their taxes. There have been many objections to claims in this case.

Counsel does not explain how communicating with the Debtors regarding their objections to claims, and filing multiple objections to claims forced Counsel to perform work substantial, unanticipated work that was not expected at the outset of the case. The Memorandum further asserts that the Debtors have objected to many claims, resulting in many of them being disallowed. Counsel does not explain, however, how these objections to claims were unanticipated prior to the filing of the case.

In fact, Local Bankruptcy Rule 2016-1(c)(3) provides that generally, a fixed fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as, "reviewing the notice of filed claims, **objecting to untimely claims**, and modifying the plan to conform it to the claims filed."

Declaration of Scott Hughes

The Applicant not having demonstrated that the work performed for which additional compensation is requested was substantial and unanticipated in nature, the court reviews the declaration of the Applicant filed in support of the Motion. Dckt. No. 77.

The Applicant testifies that additional fees earned and costs were incurred for the services rendered in the time period of September 5, 2013 to July 16, 2014. An itemized time sheet was filed as Exhibit "C," Dckt. No. 76. Applicant states that he anticipates that the Debtors will make their last plan payment on or about August 25, 2015 and that they will receive their discharge shortly thereafter. Applicant is now requesting that he be allowed an additional $3,050.00 in fees in this case and $38.70 in postage costs.

In his Declaration, Applicant explains that, when he met the debtors, Mrs. Worch had cancer and a heart attack. Debtors' finances "were a mess." Applicant filed the Chapter 13 to stop two lawsuits to collect medical bills. Applicant further states that he have done substantial additional work in this case that was not anticipated when this case was filed and that exceeds the amount of work normally done in a typical chapter 13. Specifically, the Declaration asserts that:

> I have had many more phone calls and letters with these debtors than I usually have in a typical chapter 13. If the court reviews the time sheets submitted with the application, the court will see that I have spent more time than what would be considered "typical" in a chapter 13 case.

¶ 8, Declaration of Scott Hughes, Dckt. No. 77. Applicant describes having to stop two lawsuits and file a Notice of Stay in those cases, as well as object to multiple claims beyond the Statute of Limitations periods.

Applicant states that he has worked with the IRS on their claim, as well as a mortgage lender to get them to withdraw their claim for additional fees and expenses. Applicant summarizes the work as and the case as having "an extraordinary amount of objections to claims." ¶ 7, Declaration of Scott Hughes, Dckt. No. 77. Applicant states that he has had many more phone calls and letters with these debtors than I usually have in a typical Chapter 13,

asserting that, if the court reviews the time sheets submitted with the application, the court will see that Applicant have spent more time than what would be considered "typical" in a chapter 13 case.

Although Applicant continues to assert that he performed additional work that was not anticipated when the case was filed, Applicant does not specifically describe why this work--appearing to consist of an extraordinary amount of time being committed to objecting to a high volume claims filed by creditors and debt servicers like American Express, Asset Acceptance, Calvry SPV I, LLC, Ocwen Loan Servicing, etc.--could not have been expected by Debtors and Debtors' counsel at the commencement of this case. Applicant provides no evidence supporting his contention that the work was unanticipated. Additionally, an acknowledgment by the Debtor clients stating that the Debtors agree with the requested fees, will not certify that the Applicant's Application for Fees has met this legal standard.

Presumably, Applicant spent some time consulting with the Debtors and reviewing Debtors' finances and anticipated claims before the filing of this case. Just because Applicant maintains that the work performed on the case exceeds the amount of work Applicant has become accustomed to performing in more garden-flavor or more straightforward Chapter 13 cases for more "typical" clients, however, does not explain why Applicant did not expect this volume of work and the large amount of claims that would be filed against Debtors, before Applicant assisted Debtors in initiating their case. Applicant opted for fixed fees granted under Local Bankruptcy Rule 2016-1(c)(3) and provided for in the order confirming the plan, which requires that Applicant prove that any additional fee requested is compensation substantial and unanticipated legal work.

Here, Applicant has not demonstrated that the services performed were substantial and unanticipated, warranting additional fees under Local Bankruptcy Rule 2016-1(c)(3) in this case. The Motion is denied without prejudice.

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 Scott Hughes ("Applicant"), Attorney for Debtors Charles and Candice Worch, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Additional Attorney Fees is denied without prejudice.

39. 13-32861-E-13 JAMES/BETH FRY
PGM-2 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
5-15-14 [66]

CONT. FROM 8-5-14

Tentative Ruling: The Motion to Confirm Plan 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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 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). 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.

The Chapter 13 Trustee opposes the motion on the basis that Class 4 of Debtors' plan indicates that Debtors are in a trial loan modification effective May 2014. Debtors have filed a Motion to Approve Loan Modification, but the plan does not contain any provisions for the mortgage in the event the trial modification does not become permanent. The motion does not indicate any alternative provision for the mortgage or indicate what the terms of the permanent modification would be.

Additionally, the Trustee argues that the Debtors' plan may not be the Debtors best effort. Trustee states the Debtors are below median income. The amended plan calls for payments of a total of $7,500 through April 2014 and then $850.00 per month for the remainder of the plan. The most recently filed Schedule J, Dckt. 77, indicates combined monthly income from Schedule I of $4,660.26 per month. Expenses on Schedule J total $3,809.75, leaving net income of $850.51 per month. Item #24 indicates that "Debtor wife has new single job ... ". Debtors Declaration in Support of the Motion to Confirm indicates that Debtors are employed by Sacramento City Unified School District and Hallmark Rehab Group but the Declaration does not indicate any changes to the Debtors income.

The most recently filed Schedule I, Dckt. 29, filed on December 2, 2013 indicates Beth Fry is employed by HCR Manor Care, her gross income is $4,742.05 and the net income on the Schedule is $5,627.48 (not $4,660.26 as indicated on the most recent Schedule J). The Trustee is not aware of any other amended Schedule I to date. Debtors may have more than the net income of $850.51 which may be paid into the plan for the benefit of unsecured creditors.

DEBTOR'S RESPONSE

Debtors respond, stating that additional time is needed to address the Trustee's concerns, to provide the Trustee with statements and the financial effect on the disposable income funding the plan.

On July 30, 2014, the Chapter 13 Trustee filed a supplemental declaration stating that no additional information had been provided to the Trustee. Nothing has been filed with the court as of the September 3, 2014, review for this hearing.

Based on the foregoing, the court continued the hearing to allow the Debtors to provide the Trustee with the requested documentation and for the Trustee to file additional opposition, if any. At the August 5, 2014 hearing, the court ordered that supplemental pleadings and proposed amendments be filed and served by August 15, 2014, and Reply pleadings, if any, on or before August 22, 2014. Civil Minutes, Dckt. No. 98.

Additionally, on this same hearing date, the court denies Debtors' Motion to Approve their Loan Modification, on the basis that the Motion does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court has noted that it cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. In their Motion filed on August 12, 2014, the Debtors fail to identify the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party. The motion was also denied on the basis that a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a). Motion to Approve Loan Modification, PGM-4.

The Debtors not having provided the supplemental information in their income and expenses as requested by the Trustee, and their Motion to Approve the Loan Modification having been denied by the court on this same hearing

date, the proposed 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied.

40. 13-32861-E-13 JAMES/BETH FRY — MOTION TO APPROVE LOAN MODIFICATION
PGM-4 Peter G. Macaluso — 8-12-14 [99]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, the Debtor, and the United States Trustee on August 12, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

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

A. Debtors, James C. and Beth M. Fry ("Debtors") request permission to enter into a loan modification agreement with a creditor whose name is "Lender."

B. The Chapter 13 was filed on October 1, 2013. The Debtors have been in the Chapter 13 for 9 months.

C. Debtors own real property located at 5966 Raymond Way, Sacramento, CA 95820.

D. The Debtor has completed trial loan modification payments and has been offered a permanent loan modification. The first modified payment in the amount of $797.63 at 5.125% was due on August 1, 2014. Payment includes $538.45 for principal and interest and $254.93 for escrow. Debtor will make this payment for a total of four hundred eighty (480) months.

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

F. As of the Modification Effective Date the principal balance of the loan that will be due and payable is $109,774.61 (the "New Principal Balance").

G. Debtor understands that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under the loan modification. Interest at the rate of 5.125% will begin to accrue on the New Principal Balance as of July 1, 2014.

H. The Maturity Date will be July 1, 2054. 11. The agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, and/or any Discharge that the debtor may receive in this case.

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based.

The Motion merely states that Debtors seek an order authorizing the Debtors to enter into a loan modification agreement with "Lender." Dckt. No. 99. Nowhere in the Motion do Debtors identify the actual owner of the underlying loan obligation. It is as if Movant is taking care to avoid naming the Lender and executor of Debtors' Note. This omission is fatal to a Motion seeking an order approving an modification agreement entered between and requiring the permission and consent of the borrowing Debtor and lending party.

A Motion to Approve a Loan Modification that does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Debtors fail to identify the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party.

A motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a).

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."

Based on the Debtors' failure to meet the basic requirement of identifying the Lender that has agreed to the loan modification agreement that is the subject of this Motion, the Motion to Approve the Loan Modification is denied without prejudice.
The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors James C. and Beth M. Fry 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 the Loan Modification is denied without prejudice.

41. 14-26567-E-13 SAMUEL TAPIA
JGD-2 John G. Downing

MOTION TO VALUE COLLATERAL OF PROPERTY LOCATED AT 8781 MINNOW AVE, KINGS BEACH, CALIFORNIA
8-25-14 [35]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 25, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Specialized Loan Servicing, "Creditor," is denied without prejudice.

The Motion to Value filed by Samuel Tapia, "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 8781 Minnow Avenue, Kings Beach, California, "Property." Debtor seeks to value the Property at a fair market value of $254,000.00 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.

INCORRECTLY IDENTIFIED CREDITOR

Debtor seeks to value the secured claim of "Specialized Loan Servicing." However, it has been repeatedly represented in this court that loan servicing companies including Specialized Loan Servicing, LLC, are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim.

Debtor states in the Motion to Value the Secured claim that the subject home equity loan is serviced by Specialized Loan Servicing in the amount of $43,965.70, and describes Specialized Loan Servicing as an assignee of the original lender Greenpoint Mortgage Funding, Inc. Capitol One, N.A., is the successor in interest to Greenpoint Mortgage Funding, Inc. Dckt. No. 35.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Specialized Loan Servicing, LLC. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

The misidentification of creditors for purposes of § 506(a) motions wil be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights.

In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

Debtor provides no exhibits showing that Specialized Loan Servicing, LLC is the actual owner of the underlying obligation. Debtor's Schedule D indicates that a claim secured by real property located at "8781 Minnow Ave, Kings Beach CA 96143" is held by Specialized Loan Servicing in the amount of $250,000.without deducting the value of the collateral. Dckt. No. 1 at 13. Debtor has made no showing that Specialized Loan Servicing is the actual owner of the claim, and that obtaining an order to value the subject claim as modifying the rights of Specialized Loan Servicing is proper, given that the actual creditor holding the second deed of trust and Note may not be party and have been notified of this Motion.

No assignment or transfer of claim appears on the docket transferring any interest to Specialized Loan Servicing, LLC. The court is not certain how Debtors can name Specialized Loan Servicing, LLC as the actual lender for an obligation that appears to be owed to another originating entity. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

Additionally, no Proof of Claim has been filed on the claims registrar by Specialized Loan Servicing, LLC, which may assert that it is the holder of the Note secured by the deed of trust, or any other party claiming that it is the actual owner of the subject claim. The real creditor of interest in possession of the Note may not have received notice of the Debtor's bankruptcy, and may not have been served notice and the pleadings in this Motion that fundamentally affects its right as a Creditor in this case.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

Based on the foregoing, the valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Samuel , "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 denied without prejudice.

42. 13-35369-E-13 VASILIOS TSIGARIS **MOTION TO CONFIRM PLAN**
MAC-2 Marc A. Caraska **7-15-14 [81]**

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 15, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

43. 11-36470-E-13 WW-3 WASIF/IRUM ASGHAR Mark A. Wolff

CONTINUED MOTION TO CONDITIONALLY DETERMINE THE VALUE OF THE CLAIM PENDING RESOLUTION OF THE APPEAL 7-15-13 [73]

Tentative Ruling: The Objection to Claim 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 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 15, 2013. By the court's calculation, 57 days' notice was provided. 44 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The respondent Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

An Evidentiary Hearing for the Objection to Claim of the California State Board of Equalization shall be conducted at -------- on -------, 2014.

PROCEDURAL HISTORY

At the September 10, 2013 hearing on the Objection to Claim, the court continued the hearing so that the Objection could be heard after the State Board of Equalization's review of Debtor's appeal. Dckt. No. 85. The court further stated that if the review had not been completed in a timely manner, this court would have to determine the issue as a necessary proceeding for the administration of federal law.

At the March 4, 2014 hearing, the parties reported that an offer for settlement in being reviewed by the State Board of Equalization and requested an additional 60 day continuance. The court continued the hearing.

A review of the case docket at the May 6, 2014 hearing showed that nothing was filed by either the Debtors or the Board of Equalization, to show whether the determination on the appeal has been made. The court continued the Objection to Proof of Claim No. 29 of the State Board of Equalization to this hearing date to bring the objection to conclusion pursuant to 11 U.S.C. § 505.

REVIEW OF OBJECTION

The Proof of Claim at issue, listed as claim number 29 on the court's official claims registry, asserts a $37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773.

The Debtor objects to the Proof of Claim on the basis that he was not the responsible party during the time period for which the tax claim is asserted. Debtor Wasif Asghar asserts that he was involved in an accident and due to the illness relating thereto was not involved in the operation of the business during that period.

Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

CREDITOR'S OPPOSITION

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount

of $1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of $37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

DISCUSSION

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

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

AUGUST 8, 2014 STATUS REPORT BY THE STATE BOARD OF EQUALIZATION

Tax creditor, the California State Board of Equalization (identified as the "SBE") submits a Status Report on the Debtors' Objection to Claim of State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal.

On July 15, 2013, the Debtors filed their Claim Objection against the SBE. This was because Chapter 13 Trustee, in compiling a list of timely filed claims, indicated that the plan may not be feasible, and that case dismissal may be warranted. Dckt. No. 51. The Court continued the original September 10, 2013 hearing on the Claim Objection to March 4, 2014. Dckt. No. 87, then to May 6, 2014, Dckt No. 90, then to August 19, 2014, Dckt. No. 93, so that the Debtors may engage in out of court settlement discussions with the SBE, and pursue their administrative appeals rights with the SBE's Appeals Division for a re-determination of tax.

On April 13, 2012, the contested tax was billed to Debtor, Wasif Asghar, in his capacity as a "responsible person" for the now-ceased QS Ventures, Inc., because its tax debts to the SBE remain outstanding. Cal. Rev. & Tax. Code § 6829; Cal. Code Regs., tit. 18 § 1702. The federal counterpart "responsible person" tax statute is at 26 U.S.C. § 6672, and is frequently

litigated in bankruptcy courts. 11 COLLIER ON BANKRUPTCY TAXATION §TX15.02 (2014).

SBE states that on or about April 2, 2014, the SBE informed the Debtors' counsel that the SBE rejected the Debtors' written tax settlement proposal under the guidelines of Cal. Rev. & Tax. Code § 7093.5(c).

The Debtors currently have a scheduled conference with a hearing officer with the SBE's Appeals Division on September 4, 2014, designated as Case Id. 611390. See Cal. Code Regs., tit. 18 § 5264. Because this multi-level appeals process has not yet concluded, this contested "responsible person" tax remains contingent for bankruptcy purposes. Notwithstanding this upcoming conference, the SBE states that it concurs with the Court's discussion in its previous minute orders that the Court has permissive jurisdiction under 11 U.S.C. § 505(a) for a determination of a contingent state tax liability, as a necessary proceeding for the administration of federal law.

Creditor again asserts that the Debtors have not met their burden of proof in objecting to the state tax claim. As briefed in the SBE's August 22, 2013 Opposition to the Debtors' Objection to the Claim of the California State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal ("Opposition"), Dckt. No. 82, in the context of a claim objection to a state tax, the burden of proof is determined by state tax law. *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000).

Under California law, a tax assessment billing by a revenue agency is presumed to be correct, and the burden of proof to show otherwise stays with the taxpayer. Flying Tiger Line v. State Bd. of Equalization, 157 Cal. App. 2d 85, 99 (1958); 67B AM. JUR. 2D Sales and Use Taxes § 214 (2013). A taxpayer who objects to his or her "responsible person" tax liability bears the burden of proof. *Latin v. State Bd. of Equalization* (*In re Latin*), 2009 Bankr. LEXIS 4523 *23-24 (B.A.P. 9th Cir. 2009) (explaining that Sales and Use Tax Regulation 1702.5 requires that a taxpayer provide evidence that he or she lacked responsibility or willfulness).

SBE argues that Debtor Wasif Asghar has was not sufficiently controverted the contention that he was the responsible person for taxes of the QS Ventures, Inc, during the relevant time period. As explained in SBE's Opposition to the Objection, Debtors' proof consisted only of a single Kaiser Permanente doctor's visit on or about July 31, 2007. SBE asserts that his in and of itself does not demonstrate that Debtor, Wasif Asghar, at all relevant times, was not a person responsible for payment of California sales taxes on behalf of QS Ventures, Inc. The Debtors have not met their burden of proof. Thus, SBE requests that the Objection be overruled.

SCHEDULING OF AN EVIDENTIARY HEARING

This bankruptcy case was filed on July 1, 2011 (three years ago). Creditor filed its proof of claim on November 30, 2011 (two years and eight months ago). Proof of Claim No. 29. This Objection to Creditor's Claim was filed on July 15 2013 (now more than one year ago).

The parties, now more than three years into this case, have been unable to resolve this dispute. The court has continued and re-continued the hearing to afford good faith, bona fide settlement discussions to be conducted. After such good faith efforts, there is no resolution. Therefore, the court determines that it is necessary for the claims objection process to proceed and this court determine what claim, if any, is allowed in this case.

At the hearing held on this matter on August 19, 2014, the court issued an evidentiary hearing order substantially in the following form, holding that:

a. This Objection to Claim is a core matter pursuant to 28 U.S.C. § 157, for which jurisdiction in this bankruptcy exists pursuant to 28 U.S.C. § 1334 and the reference to this bankruptcy court by the United States District Court for the Eastern District of California.

b. On or before xxxxxx, 2014, Wasif Asghar and Irum Asghar, the Objecting Debtors, ("Debtor") shall file with the court and serve on the California Franchise Tax Board, Creditor, ("Creditor") a list of witnesses and exhibits (excluding possible rebuttal witnesses and exhibits) to be presented at the evidentiary hearing for Debtor's case in chief.

c. On or before xxxxxx, 2014, Creditor shall file and serve on Debtor a list of witnesses and exhibits (excluding possible rebuttal witnesses and exhibits) to be presented at the Evidentiary Hearing for Creditor's case in chief.

d. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

e. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before xxxxxx, 2014.

f. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before xxxxxx, 2014.

g. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before xxxxxx, 2014.

h. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before xxxxxx, 2014

i. The Evidentiary Hearing shall be conducted at xxxxxx.m. on xxxxxx, 2014.

Civil Minutes, Dckt. No. 96.

44. 14-23972-E-13 DPC-1 | **THOMAS BURGESS AND PATRICIA VIRDEN**
Eamonn Foster

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-19-14 [26]

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 June 19, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

CONTINUANCE

The courts continued the Objection to Confirmation on this hearing date, and ordered the Debtors to file and serve their Opposition on or before August 14, 2014, and the Trustee to file and serve a reply, if so desired, and on or before August 20, 2014. Civil Minutes, Dckt. No. 31.

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

1. Debtors' plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors appear to be over the median income and propose plan payments of $845.00 for 60 months, with an 8% dividend to the unsecured claim holders.

a. Income: Thomas Burgess's gross income listed on Schedule I reflects $3,160.67; however, his pay advices provided to the Trustee reflect a gross of $4,831.89 per month. Exhibit "A."

b. Retirement Loan: Schedule I lists a payroll deduction on Line #5d in the amount of $333.25. Debtor admitted at the First Meeting of Creditors held on June 12, 2014, that the retirement loan will be paid in full in a year and a half. The loan will mature within the life of the plan and the Debtors have not proposed to increase their plan payments once the loan is paid.

c. Not all Income Reported: Debtors received a tax refund of $3,202.00 for 2013 and a federal refund of $1,480.00 in 2012. The Trustee did not receive a copy of the Debtors' 2012 state return. No future tax refund income is projected on Schedule I. Debtors received $2,049.00 in federal tax refund based on their total tax payments of $5,025.00, where only $2,976.00 of tax was due.

Debtors also received a state refund from their 2013 return in the amount of $1,153.00. Of the $2,049.00 refund, $1,399 was from education credits, and $200 was from the Child Tax Credit, since Debtors' depends are reported on Schedule I as ages 8, 13, and 19. It appears that since Debtors are retaining their real property, their tax deductions in the future are likely to remain the same or similar. If Debtors included this income in their monthly income calculation, dividing their monthly income throughout the year, they would have at least $266.83 per month in additional income. Continued tax refunds appear likely, and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

d. Retain Property: The Plan proposes to retain a 2013 Mahindra 3016 tractor purchased in June 2013. According to Schedule D, the Debtors owe $27,536.00 to Mahindra. Section 2.11 lists the monthly obligation in the amount of $372.25 per month. Schedule I, Line 8a lists Debtors' net income from their walnut orchard in the amount of $84.00 per month. Retaining the tractor appears to be to the detriment of creditors. The Debtors acquired the orchard when they purchased their residence.

Question No. 18 of the Statement of Financial Affairs states that the business started in 2002. It is not clear what the value of the walnut crop is, and the trustee believes that the

Debtors may expect significant proceeds from their crop where they seek to retain a tractor at $372.25 per month. Debtor may have had these trees since 2002 based on the sale date of their property, and where Debtor admitted that when they bought the property it had the trees at that time.

e. Debtor's Occupation: Debtor admitted at the First Meeting of Creditors on June 12, 2014, that Patricia Virden has changed positions within Sierra Pacific Industries, and that her income has changed. No updated paystubs or amended Schedule I has been provided to the Trustee or filed with the court, so it appears that Debtor's current income is not properly stated and they may not be able to make the payments called for under the plan under 11 U.S.C. § 1325(a)(4).

2. Debtors' Plan also relies on the Motion to Value the Secured Claim of E*Trade Bank, which is set for hearing on this same day. Debtors' Plan does not currently have sufficient monies to pay the claim in full and confirmation will be denied on this basis.

RESPONSE BY DEBTORS

Debtors Thomas Arthur Burgess and Patricia Chavonne Virden, respond to the Trustee's Objection to Confirmation of Plan. Dckt. No. 36.

1. a. Income. The Trustee states that Mr. Burgess's income on Schedule I is not supported by the paystubs provided to the Trustee, and submitted as Exhibit A by the Trustee. By examining these paystubs, the Trustee is able to calculate that the Debtor's income should be $4,831.89 per month.

Debtors state that they are unable to determine how Trustee derived this number. Trustee does not provide the means of calculating this number, and "has failed to respond to requests made by Debtors' attorney."

Debtors calculated Mr. Burgess' income by averaging the Year-To-Date Gross income stated on his March 21, 2014, paystub (included in Trustee's Exhibit A). The Year-To-Date Gross income is $9484.58. Since this is the last paycheck in March, Debtor divided this number by 3, to establish that his income in the most recent time prior to his filing as $3,160. That is the number in Schedule I, as stated in Trustee's Objection (page 2, line 3). Debtors argue that the Trustee has not provided any reasonable means for calculating the numbers in his objection.

1.b. Retirement loan. Debtors understand that their payment to the 401K loan will mature during the plan. They agree that upon maturity of the loan, either the plan payment will increase or documentation must be submitted to the Trustee to show that Debtors' situation has changed. This can be included in the order confirming the plan.

1.c. Not all income reported. Debtors state that they understand the Trustee's concern about future tax refunds. Debtors can provide the

trustee with a copy of their tax returns each year and turn over any and all tax refunds received, unless there is some justifiable reason why the tax refunds need to be used by the debtors; for instance, if their vehicles, farm equipment, or home need major, unforeseen repairs. Debtors state that this can be included in the order confirming the plan.

1.d. Retain Property. The Debtors state that the Mahindra tractor is necessary for the Debtor's business and crops. Without it, the business and crops will fail; Debtors use the tractor to harvest and otherwise provide for their farming needs. The Trustee would rather Debtors surrender the tractor so that their business, which makes a profit, will fail. Debtors state that they see no legal authority for requiring them to relinquish an asset to the secured creditor for the purpose of making their business fail. If they surrender it, then they will have to hire outside labor to take over, which will cost more than the Mahindra, and will eat into their "already meager profits." Debtors state that upon investigating the issue, the Debtors cannot afford to hire laborers in their small fields.

1.e. Debtor's Occupation. Debtors protest that Trustee's statement regarding the occupation of Debtor Patricia Virden (that Ms. Virden has changed positions within Sierra Pacific Industries, and that her income has changed) "is a fabrication." Debtors say that they did not state that Patricia Virden had changed positions, nor that her income had changed. She did mention that she would not be working as much overtime in the future.

2. Plan relies on Pending Motion. This motion was heard on July 22, 2014. The court granted the motion on July 22, 2014, Docket #33. This objection is now moot.

REPLY BY CHAPTER 13 TRUSTEE

The Chapter 13 Trustee responds to the Debtors' Response by stating the following:

1. (a.) Income. The Debtors' response states that they are unable to calculate how the Trustee derived the monthly net income of $4,831.89 as noted in his objection.

The Trustee's Exhibit A consists of four (4) bi-weekly earnings statements. They include: a paystub with the paydate of February 07, 2014, showing a gross income of $2,167.74; Paystub with Pay Date February 21, 2014, showing a gross income of $1,900.37; Paystub with Pay Date March 7, 2014, showing a gross income of $2,555.86; and a Paystub with Pay Date March 21, 2014, showing a gross income of $2,282.74. The gross pay of these four statements total $8,906.71 ($1,167.74+$1,900.37+$2,555.86+$2,282.74=$8,906,71), The average of these paystubs equals $2,226.67 ($8,906.71 divided by four paystubs = $2,226.67).

Since the Debtor is paid on a bi-weekly basis, there are approximately 2.17 pay periods per month (52 weeks/year/12 months/year=4.34

weeks/month, this is then divided by 2 because paychecks are received every two weeks which = 2.17 periods per month). Multiplying the average of the paystubs, $2,226.67 by 2.17 pay periods per month equals $4,831.89. (Thus, the gross amount calculated by the Trustee.)

Debtors state that they used the year to date gross of $9,484.58, which is for the pay period ending in March 15, 2014. Debtors divided $9,484.58 by three to establish the income. Debtors' response states that this was the last payment in March. However, according to this paystub, the period ended on March 15, 2014. Adding 2 weeks or 14 days to the 15th shows that there would have been another paystub with a pay period ending at or near March 29th.
It appears that if this was the appropriate calculation, which it is not, the division should have been by approximately 2.67, not 3, yielding a monthly gross income of approximately $3,552.28--not the $3,160.00 claimed on Schedule I.

(b.) Retirement Loan. The Trustee would have no objection with language being added to the order confirming the plan, stating that the plan payment will increase by $333.25 to $1,178.25 in approximately 1.5 years when the loan is paid off.

(c.) Tax Refunds. The Trustee would have no objection to the following language being added to the order confirming the plan:

> A. At the same time the Debtors file state and federal tax returns with the respective agencies, copies of said returns shall be served on the Chapter 13 Trustee. The Debtors shall file a certificate of service attesting to such timely service on the Chapter 13 Trustee.
>
> B. All federal and state tax refund checks during the term of the Plan shall immediately upon receipt be endorsed over to the Chapter 13 Trustee for deposit in the Trustee's Chapter 13 account. The Debtors shall not receive electronic payment of any tax refunds during the term of the Plan. The Trustee shall hold such funds for a period of 60 days from receipt for Debtor to file motion for disbursement of tax refund monies to Debtors instead of to creditors through the Chapter 13 Plan. If such motion is timely filed, the Trustee shall then hold such tax refund monies until otherwise ordered by the court.

(d.) Retain Property. The Trustee questioned the Debtors' retention of the 2013 Mahindra 3016 tractor, because based on the net income reported on Schedule I from the walnut orchard of $84.00, and the expense of $372.25 to retain a tractor at $372.25 per month. The Trustee also questioned the maturity of the walnut trees, in that they were on the property when the Debtors purchased it in 2002. The maturity of the trees is relevant to the capacity of the trees to produce a viable crop. Debtors state in their response that, "The Trustee would rather Debtors surrender the Tractor so that their business, which makes a profit, will fail."

The Trustee has not requested that the Debtors surrender their asset, or wish their business to fail. The Trustee simply posed a concern in keeping this asset, when the farming operation profits are so much smaller than the expense of the asset. Further, Debtors has still not addressed the Trustee's concerns regarding the walnut grove, and the potential or lack thereof of significant profits from the trees in the future.

11 U.S.C. § 521(f)(4)(B) states:

> in a case under chapter 13—annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan; a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

The Trustee requests that this requirement be placed in the order confirming the plan to help alleviate its concerns regarding the viability of the walnut orchard.

(e.) Debtor's Occupation. The representations made by the Trustee's representative in the objection to confirmation were based on the testimony of the Debtor at the 341 Meeting of Creditors, which was held and concluded on June 12, 2014. Debtor states that no evidence have been filed in support of the Trustee's statements. However, the Debtors have not filed a copy of the transcript from the 341 Meeting of Creditors to support its assertion in the response (Chapter 13 Trustee states that he does not plan to file one).

2. Pending Motion. The parties are in agreement that the Plan no longer relies on a pending motion. The Trustee agrees that the Debtors' Motion to Value Collateral of E*Trade Bank was granted at the hearing on July 22, 2014, and that this portion of the objection is now moot.

DISCUSSION

The court addresses each of the issues raised in the Trustee's Objection, and responded to by Debtors, in turn:

1. **Income:** With respect to the Debtors' and Trustee's calculations of income, Truste's computation of Debtors' monthly net income appears to be more accurate. The Trustee calculated net income by averaging four of Debtors' bi-weekly earnings statements, which came out to $2,226.67. Since Debtor is paid twice a month, there are approximately 2.17 pay periods per month, based on there being 4.34 weeks in a month. Multiplying the average of the paystubs, $2,226.67 by 2.17 pay periods per month equals $4,831.89.

The Debtors, on the other hand, divided the year to date gross of $9,484.58 by 3 to establish income. Debtors state that this was the last payment in March; however, that particular paystub shows that the pay period ended on March 15, 201, leaving another paystub with a pay period that would have ended at or near March 29th.

The appropriate division would have been to divide the $9,484.58 by 3, yielding a gross monthly income of approximately $3,552.28--a higher amount than the $3,160.00 claimed on Schedule I.

2. **Retirement Loan**: The Trustee has no objection adopting Debtors' proposal that language be added to the order confirming the plan, stating that the plan payment will increase by $333.25, to $1,178.25 in approximately 1.5 years when the loan is paid off.

3. **Tax Refunds**: The Trustee has no objection to language providing for the turnover of all federal and state tax refund checks during the term of the Plan to the Trustee for deposit in the Trustee's Chapter 13 account. Retain Property: The Trustee has refuted Debtors' allegations that the Trustee request the Debtors surrender the 2013 Mahindra Tractor, or wishes their business to fail. Trustee merely expresses his concern in retaining an asset that presents expenses that are higher than the profits generated by the Debtors' farming operation.

   Further, Debtor has not addressed Trustee's concerns regarding the walnut grove, which may produce significant proceeds and has matured since Debtors purchased it in 2002. This part of the Trustee's objection has not been resolved. The Trustee requests that the requirements set out by 11 U.S.C. § 521(f)(4)B), mandating that Debtors file statements showing how income, expenditures, and monthly income are calculated, be added to the plan in order to alleviate the Trustee's concerns regarding the viability of the walnut orchard.

4. **Debtor's Occupation**: The representation made by the Trustee regarding Debtor Patricia Virden's occupation and income change were based on testimony made by the Debtor at the 11 U.S.C. § 341 Meeting of Creditors, which was held and concluded on June 12, 2014. The Debtors have not addressed the economic and career circumstances of Joint Debtor Patricia Virden, as represented to the Trustee at the Meeting of Creditors.

Because the Debtors have failed to address Trustee's concerns regarding the viability of Debtors' walnut grove, which may generate undisclosed profits as a mature crop, and on the lack of clarity regarding Joint Debtor Patricia Virden's occupation and income change (no updated paystubs or amended Schedule I have been provided to the Trustee or filed with the court, so that Debtors' current income is not properly stated), 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.

45. 10-39474-E-13 JOSEPH/KIMBERLEY FARINA — MOTION TO APPROVE LOAN MODIFICATION
KE-2 Karen Ehler — 7-29-14 [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, 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. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Joseph Salvatore Farina and Kimberley Lynette Farina ("Debtors") seeks court approval for Debtors to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to a monthly payment of $1,826.37 for principal, interest, and escrow account for taxes and insurance. FN.1.

FN.1. The Motion first lists the total payment for principal, interest, and escrow costs under the terms of the loan modification agreement to be $1,827.37 per month. The Motion then refers to the monthly payment under the terms of the modified amount to be $1,826.37 per month. According to the copy of the Loan Modification Agreement attached by Debtors in support of the Motion as Exhibit "A," Dckt. No. , the Debtors have promised to make monthly payments and principal and interest of $1,826.37. Thus, the figure first listed by Debtors (of $1,827.37) appears to be a typographical error.

The existing mortgage payment is $3,117.19 per month for principal,

interest, and escrow costs. The loan modification agreement also provides that $147,236.64 will be forgiven. This will reduce the mortgage principal from $465,289.64 to $318,043.00. The existing interest rate is 6.125%, whereas the new interest rate under the loan modification agreement is 4.125%. A copy of the subject Loan Modification Agreement (Providing for a Fixed Interest Rate), as Exhibit "A," on Dckt. No. 62.

The Motion is supported by the Declaration of Joseph Salvatore Farina and Kimberley Lynette Farina. Dckt. No. 61. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

The Debtors further request that the "10 day stay period pursuant to Bankruptcy Rule 6004(g) be waived" unless specific objection to the waiver is filed. Dckt. No. 59. The court does not understand this part of the relief requested by Debtors, since Federal Rule of Bankruptcy Procedure 6004(g) governs the sale of personally identifiable information under 11 U.S.C. § 363(b)(1)(B) as applied to private consumer records, and because Bankruptcy Rule 6004(g) does not impose a 10 day stay period.

Federal Rule of Bankruptcy Procedure 6004(h), however, mandates that an order authorizing the use, sale, or lease of property other than cash collateral be stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise. Even if Debtors were to correctly request a waiver of the 14 day stay period required by Federal Rule of Bankruptcy Procedure 6004(h), however, the Debtors have merely stated the request for relief, without having shown cause for the granting of such a waiver. That request is denied.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors Joseph Salvatore Farina and Kimberley Lynette Farina ("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 court authorizes Joseph Salvatore Farina and Kimberley Lynette Farina ("Debtors") to amend the terms of the loan with Nationstar Mortgage, LLC, which is secured by the real property commonly known as 902 Cranston Drive, Woodland, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. No. 62.

46. 14-25585-E-13 SCOTT OLNEY **MOTION TO CONFIRM PLAN**
LBG-1 Lucas B. Garcia **7-17-14 [24]**

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 17, 2014. By the court's calculation, 54 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 objects to the confirmation of Debtor's plan on the basis that the Internal Revenue Service filed a claim on August 20, 2014, which is not provided for in the proposed amended plan.

On August 20, 2014, the Internal Revenue Service filed a proof of claim asserting a secured claim in the amount of $9,416.08, and a priority claim filed in the amount of $11,305.73. The proof of claim provides that Debtor has not filed tax returns for 2010 and 2013. The amended plan filed on July 11, 2014, fails to provide for the secured claim of the Internal Revenue Service

in the amount of $9,416.08, and the priority portion of the Internal Revenue Service in the amount of $11,305.73 is only partially provided for in Class 5 in the amount of $9,595.00.

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.

47. 10-37491-E-13 LUIS/ROSA NUNEZ — MOTION TO MODIFY PLAN
TJW-2 Timothy J. Walsh — 7-10-14 [51]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2014. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

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

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

1. ***Standard Plan Forms Have Been Altered:*** Under the confirmed Plan, Debtor's payments are $600.00 for 60 months with 27% to unsecured claim holders, for a total to be paid in of at least $36,000.00. Debtors are above the median income, according to the Form 22C filed with the court on July 1, 2010, Dckt. No. 1, indicating an applicable commitment period of 60 months. The case was filed on July 1, 2010, and August is Month 49 under the plan in which a payment was due. Debtors are $2,400.00 delinquent under the confirmed plan, with the last payment of $1,800.00 having posted March 20, 2014, month 44, with $26,400.00 being the total paid to date and only $63.75 being the balance on hand of undisbursed funds.

   Debtors now propose to reduce their commitment period from 60 months to 44 months, but the Debtor has also changed the minimum percentage to unsecured claims in Class 7, Section 3.20. The Debtor had provided that the unsecured claims would receive no less than a 27% dividend, but now provides that unsecured claims will receive approximately 25% but no less than a zero% dividend. The Debtor has altered the terms of the plan rather than placing the information in the additional provisions section where he is no longer proposing simply a minimum percentage.

   Trustee notes that the unsecured claims range in size from $48.00 for First Solano Credit Union, Proof of Claim No. 7 to $38,055.83 for First Solano Credit Union. Trustee has not yet made any disbursement to the smallest claim (where $12.96 would be the total amount due at 27%), although the Trustee has paid 21.55% to the largest claim. August is month 49 under the confirmed plan, and the Trustee has disbursed from 0% to 21.55% unsecured claim holders to date. No secured claim holders are currently being paid through the plan.

   Unsecured claim holders filed claims totaling $110,717.76 with disbursements made to date of $23,448.70. Debtors are proposing no additional payments to the plan, however, and 25% to unsecured claim holders, or a total of $28,742.93, including Trustee fees. The Trustee calculates that it will take an additional 8 months to disburse 25% to the unsecured claim holders if payments were to be made at the $600.00 per month rate (and assuming that no payment is made in August.)

2. ***Inaccurate Budget:*** Debtors' Motion indicates that the reason for Debtors' modified plan is due to Luis Nunez losing his job and receiving unemployment. Debtors' Schedule I reflects unemployment income of $1,950.00 per month. Debtors file as Exhibit 1 a statement from EDD dated June 17, 2014, in support of the unemployment income. Debtors' Schedule J reflects a monthly net income of -$1,385.26. Debtors state in the cover page of their Exhibits that:

The format of Schedule J does not accurately reflect our actual expenditures, because obviously we do not have the money to fund our household in the manner required. We did adjust some items, such as gas recreation, clothing, and charitable contributions. We most likely either have cut down on the food, or have missed the house payments, or electric bills.

This schedule J is not intended to present actual expenditures at this moment in time, but is intended to show the Court what our normal household expenses should be, and would be projected to be if we can recoup some lost income. Husband who lost his job due to cutbacks is 66 years old, had worked for the same employer for over 30 years, as a manager, and is unlikely to find similar employment in our current economy.

Debtor's Schedules I and J filed as Exhibit 2 were not filed using the Official Form B 61 and 6J effective December 2013. The official forms are designed to show current income and expenditures, and allow the Debtor to check a box indicating the form is "A supplement showing post-petition Chapter 13 income as of the following date." (Schedule I), or "A supplement showing post-petition chapter 13 income as of the following date" (Schedule J). If Debtors are seeking relief from the court, the Debtors should provide the court with accurate information or the court may find that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

3. ***Hardship Discharge:*** Where the present plan requires no additional payments, and Debtors reflect a negative net income, the motion appears to be a motion for an early discharge governed by 11 U.S.C. § 1328(b). The Debtors have not filed the motion as a motion for hardship discharge. Debtors have a debt for a junior deed of trust to First Solano Credit Union that would presumably need to be dealt with if the Debtors sought a hardship discharge.

4. ***Defective Declaration:*** Debtors' verification of the declaration fails to provide any qualification stating that the information is true and correct under penalty of perjury under the laws of the United States as required pursuant to 28 U.S.C. § 1746. Debtors' verification also provides that the information that the Debtors state are facts provided by their attorney is correct to the best of their information are correct to the best of their information and belief, regardless of whether the Debtors have knowledge, and the facts provided by the attorney are not identified in the declaration.

5. ***Incorrect Plan:*** Debtors' Modified Plan was not filed using current plan form EDC 3-080 (effective May 1, 2012), but rather form EDC-3-080 (effective October 17, 2005)(Revised February 2, 2009).

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.