

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
1300 18th Street
Bakersfield, California

Each prehearing disposition starts with the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Matters for which a "Final Ruling" has been indicated will not be called and counsel need not appear; matters for which a "Tentative Ruling" or "No Tentative Ruling" has been indicated will be called.

Thursday

September 27, 2012

9:00 a.m.

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1. [12-12204](#)-A-13 MICHAEL/FELIZA LETOURNEAU MOTION TO CONFIRM PLAN
KDG-4 7-30-12 [[68](#)]
MICHAEL LETOURNEAU/MV
JACOB EATON/Atty. for dbt.

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *Cf.*, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein.

2. [12-13704](#)-A-13 RUDOLFO/CYNTHIA BARTOLOME MOTION TO CONFIRM PLAN
VT-1 8-16-12 [[44](#)]
RUDOLFO BARTOLOME/MV
VITO TORCHIA/Atty. for dbt.

Final Ruling. The debtors filed an amended plan on September 13, 2012. See Debtors' Am. Ch. 13 Plan, ECF No. 55. The motion is denied as moot.

3. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION TO CONFIRM PLAN
PLG-2 8-8-12 [[29](#)]
EDUARDO VALLADARES/MV
FRANK RUGGIER/Atty. for dbt.
OPP BY TRUSTEE (OPP W/DRAWN
9/19)

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *Cf., Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein.

4. [11-12714](#)-A-13 EARL/SHERRY ABSHER MOTION TO SELL
LKW-4 8-17-12 [[72](#)]
EARL ABSHER/MV
LEONARD WELSH/Atty. for dbt.

Tentative Ruling. The debtors have filed a motion to sell personal property (2001 Chevrolet Corvette), for \$17,000.00 or more, subject to overbid at the hearing on the sale. The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006).

The debtors have not identified a buyer. Assuming that the proposed sale is a private sale subject to overbid, the court will grant the motion.

Section 363(b) of the Bankruptcy Code authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1). A chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. To invoke § 363(b)(1), a chapter 13 debtor must articulate a business justification for the sale. *See, e.g., In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983).

Confirmation of a chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the 2001 Chevrolet Corvette is

Rev. & Tax Code § 4221(d) (providing for a 1.5 percent monthly interest rate on defaulted tax claims). The proposed plan, moreover, does not propose to surrender the collateral subject to the secured claims of Kern County. See Debtors' Ch. 13 Plan § 2.10, July 16, 2012, ECF No. 15.

Not later than 14 days after entry of the civil minute order, the debtors shall file a modified Chapter 13 plan and shall file, serve, and set for hearing a motion to confirm the modified Chapter 13 plan, as well as required supporting documents.

Accordingly, the objection is sustained. The moving party will prepare and lodge an order consistent with this ruling.

6. [12-15726](#)-A-13 ALVARO PINON MOTION TO VALUE COLLATERAL OF
TOG-1 WELLS FARGO BANK, N.A.
ALVARO PINON/MV 8-7-12 [[15](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling. This Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Fed. R. Bankr. P. 3012. The court denies the motion without prejudice.

The declaration filed in support of the motion does not establish that the second trust is held by Wells Fargo Bank, N.A., as the motion asserts. In addition, the amount of the second deed of trust is inconsistent with the amount for such deed of trust in the motion. The motion and the declaration also contain different real property descriptions.

The motion is denied without prejudice. The moving party shall prepare and lodge an order consistent with this ruling.

7. [12-10827](#)-A-13 JAMES HOOVER MOTION TO SUBSTITUTE ATTORNEY
[12-1025](#) JVH-2 7-25-12 [[40](#)]
HOOVER V. BASSET
STEVEN SMITH/Atty. for mv.

Tentative Ruling. The motion is denied as moot given the court's order substituting Phillip W. Gillet as plaintiff's attorney of record in this case. Ex Parte Order Substitution of Att'y, Sept. 18, 2012, ECF No. 52. The court will issue a minute order.

8. [12-13727](#)-A-13 GREGORY SCHULTZ CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY MICHAEL
MICHAEL MEYER/MV H. MEYER
6-27-12 [[20](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSE BY DEBTOR

No tentative ruling.

9. [12-13429](#)-A-13 RICHARD/KIMIE HUGHES MOTION TO CONFIRM PLAN
LKW-1 7-20-12 [[21](#)]
RICHARD HUGHES/MV
LEONARD WELSH/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. The debtors have amended their chapter 13 plan and filed a motion to confirm the plan. Debtors' 2d Modified Ch. 13 Plan & Mot. to Confirm, Sept. 21, 2012, ECF Nos. 45, 47. The motion is denied as moot. The court will issue a minute order.

10. [12-13429](#)-A-13 RICHARD/KIMIE HUGHES MOTION TO VALUE COLLATERAL OF
LKW-2 SUNTRUST MORTGAGE, INC.
RICHARD HUGHES/MV 8-3-12 [[34](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling. The debtors' motion to value collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The default of respondent creditor is entered, and the matter is resolved without oral argument. The court grants the motion.

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A Motion to Value the debtor's principal residence should be granted upon a three-fold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the amount due liens senior to the claim that is the subject of the valuation exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value the debtors' residence located at 4719 Black Hills Way, Bakersfield, California. The court values the debtor's residence at \$151,900.00. The residence is encumbered by a first deed of trust held by Nationstar Mortgage securing a loan with a balance of \$305,061.11. The property is also encumbered by a junior lien in favor of respondent creditor in the amount of \$70,740.00. Because the amount owed to senior lien holders exceeds the value of the collateral, respondent creditor's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Accordingly, the motion is granted. The moving party shall prepare and lodge an order consistent with the findings herein.

11. [12-15332](#)-A-13 DAVID/LAURETTA SMITH MOTION FOR RELIEF FROM
BGG-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 8-1-12 [[19](#)]
SERVICES, INC./MV
VINCENT GORSKI/Atty. for dbt.
BEN GAGE/Atty. for mv.
COMMENTS BY TRUSTEE

Tentative Ruling. The matter resolved by Stipulation, September 10, 2012, ECF No. 37, the court intends to drop the matter from calendar as moot.

12. [12-10933](#)-A-13 LOREN DE LA ROSA OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 8-16-12 [[49](#)]
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling. The case dismissed, the motion is dropped as moot.

13. [12-10933](#)-A-13 LOREN DE LA ROSA OBJECTION TO CONFIRMATION OF
PPR-2 PLAN BY WELLS FARGO BANK, N.A.
WELLS FARGO BANK, N.A./MV 8-21-12 [[56](#)]
WILLIAM OLCOTT/Atty. for dbt.
JEANNETTE MARSALA/Atty. for mv.

Final Ruling. The case dismissed, the motion is dropped as moot.

14. [12-10933](#)-A-13 LOREN DE LA ROSA MOTION TO CONFIRM PLAN
WDO-3 8-21-12 [[52](#)]
LOREN DE LA ROSA/MV
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling. The case dismissed, the motion is dropped as moot.

15. [11-17439](#)-A-13 LORETO/JACQUELINE RIVERA MOTION FOR TURNOVER OF ESTATE
PWG-2 PROPERTY PURSUANT TO 11 U.S.C.
LORETO RIVERA/MV 542
8-23-12 [[37](#)]
PHILLIP GILLET/Atty. for dbt.

Tentative Ruling. This a Motion to Compel Turnover of Property of the Estate by FIA Card Services. 11 U.S.C. §542. The motion will be denied without prejudice. Except for a turnover from the debtor, a request for turnover must be brought by adversary proceeding. Fed. R. Bankr. P. 7001(1). The court will issue a minute order.

16. [12-16742](#)-A-13 ANDREW/ASHLEY MEYERS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-30-12 [[22](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling. If the debtors have not paid all past due installment payments of filing and administrative fees by the date of the hearing, then the court will order that the case be dismissed.

17. [12-12944](#)-A-13 DAVID/PAULA CARDENAS MOTION TO CONFIRM PLAN
SJS-1 8-19-12 [[54](#)]
DAVID CARDENAS/MV
SUSAN SALEHI/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. This is a Motion to Confirm Chapter 13 Plan set pursuant to Local Bankruptcy Rule 3015-1(d)(1). Debtors Paul Cardenas and Paula Cardenas seek to confirm their First Amended Chapter 13 Plan, August 19, 2012, ECF No. 52. In support of confirmation they offer the motion (supported by declaration) and Amended Form B22C filed August 19, 2012, ECF No. 53. The Chapter 13 trustee opposes confirmation, citing: (1) feasibility; (2) lack of a supporting declaration; and (3) projected disposable income. The Chapter 13 trustee has the better part of the argument and the objection will be sustained.

Chapter 13 debtors seeking plan confirmation have the burden of proving that each and every element of 11 United States Code section 1325 has been met. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995). The court agrees with the Chapter 13 trustee as to each objection. First, the debtors have not shown the plan is feasible. Section 1325 provides "(a) Except as provided in subsection (b), the court shall confirm a plan if...(6)-- the debtor will be able to make all payments under the plan and to comply with the plan." In this case, the debtors' most recent Schedules I and J were filed on March 31, 2012, which is nearly six months ago. This is too remote in time to the instant confirmation hearing to support a finding of feasibility.

Second, the motion is unsupported by declaration. Local Bankruptcy Rule 9014-1(d)(6) provides, "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." A party seeking to confirm a Chapter 13 plan must show that each of the elements of § 1325(a) have been met. *Barnes*, 32 F.3d at 407; *Andrews*, 49 F.3d at 1408. No supporting declaration has been filed and the movants have not sustained their burden of proof on the issue.

Third, the debtor has not properly calculated the projected disposable income or devoted it to the payment of unsecured creditors. There are two subspecies of this problem. Initially, the court notes that the debtor's attempt to deduct a work related expense on Line 34 of Form B22C is improper. Line 34 of Form B22C relates to education expenses required for employment or for physically or mentally challenged children. This expense is neither. It is a work-related expense and that should properly be listed on Line 60 of Form B22C.

But more importantly, the debtors have not offered sufficient evidence

from which the court might sustain a finding in their favor. Section 1325(b) requires that if the trustee or a holder of an allowed unsecured claim objects, the plan must pay allowed unsecured claims in full or must devote all of the debtor's projected disposable income toward payment of creditors for the applicable commitment period. Projected disposable income is a defined term. Projected disposable income is calculated in a two-step process. *Lanning v. Hamilton*, 130 S.Ct. 2464 (2010). Initially, "disposable income" is calculated by means of a rigid statutory formula. Disposable income is current monthly income less amounts reasonably necessary to be expended, which are determined under § 707(b)(2)(A)-(B). 11 U.S.C. § 1325(b)(2). The amount left is presumptively the debtor's projected disposable income. *In re Lanning*, 545 F.3d 1269 (10th Cir. 2008), *aff'd Hamilton v. Lanning*, 130 S.Ct. 2464 (2010). Debtors, creditors or Chapter 13 trustees have the opportunity to rebut the presumption and demonstrate that the projected disposable income is actually higher, or lower, than the amount derived under the disposable income calculus of § 1325(b). *Hamilton*, 130 S.Ct. At 2472. *Danielson v. Flores*, -F.3d - (9th Cir. August 31, 2012) (citing *Nowlin v. Peake (In re Nowlin)*, 576 F.2d 258, 263 (5th Cir. 2009) requiring a showing of "substantial changes to the debtor's income or expenses.") Assuming that the debtor's travel expenses are one of the changes of which *Lanning*, speaks, the burden of proof is on the party attempting to rebut the presumption. In this case, the debtor has submitted only six expense receipts, Exh. B to Declaration of Cardenas, June 26, 2012, ECF No. 33, incurred in January and February 2012 for Paul Cardenas's work related travel. This is insufficient. But even if proven, there has been no change in Cardenas's income of expenses, the need for worked-related travel and payment of expenses, a long-standing practice and, therefore, is not within the narrow exception described in *Lanning*, 130 S.Ct. at 2472.

The more likely avenue for the debtor to deduct such work-related expense is the special circumstance exception. 11 U.S.C. §707(b)(2)(B), 1325(b)(3); *Lanning v. Hamilton*, 130 S.Ct. 2464, 2477 (2010) (leaving special circumstance exception open in Chapter 13). Special circumstances is a defined term and is very narrow. 11 U.S.C. § 707(b)(2)(B). The statute offers examples of serious medical condition or a call to active duty in the armed services. Special circumstances must be beyond the debtor's control and that put a "strain on a debtor's household budget.") *In re Egeberg*, 574 F.3d 1045, 1053 (9th Cir. 2009); 11 U.S.C. §707(b)(2)(B)(I). The statute provides, "In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide-(I) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable. (iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required." 11 U.S.C. § 707(b)(2)(B)(ii)-(iii). But the debtor has offered insufficient proof on the issue of special circumstances. Accordingly, the objection is sustained.

Not later than 75 days from the date of the hearing hereon, the debtor shall confirm a plan. If the debtor fails to do so, the case will be dismissed on the motion of the Chapter 13 trustee or any party in interest.

18. [12-15047](#)-A-13 CHARLES DAVIS
MHM-1
MICHAEL MEYER/MV
WILLIAM OLCOTT/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-16-12 [[16](#)]

Final Ruling. The chapter 13 trustee's objection to the debtor's claim of exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The default of debtor is entered, and the matter is resolved without oral argument. The court sustains the objection.

The debtor has claimed an exemption under California Code of Civil Procedure section 703.140(b)(7) in the face amount of two life insurance policies listed on Schedule C. The trustee objects on grounds that § 703.140(b)(7) only permits the debtor to exempt the debtor's ownership interest in a the life insurance policy itself, which does not include the right to claim as exempt the proceeds of the policy, the policy's face value. The trustee is correct.

The Ninth Circuit has interpreted a very similar exemption provision under California Code of Civil Procedure section 704.100(a) and found that the provision exempts only the debtor's ownership interest in the policy, which is "the right to maintain the policy and name a beneficiary," and does not exempt any rights the debtor may have as a beneficiary to the policy's face value. *See Woodson v. Fireman's Fund Ins. Co (In re Woodson)*, 839 F.2d 610, 618 (9th Cir. 1988). The Woodson court distinguished between owning a policy and being the policy's beneficiary. *Id.* at 618-19. Even a debtor who happens to be both an owner and a beneficiary of a policy cannot claim the face value of the policy as exempt because the statute exempting an unmaturred life policy only allows the ownership interest to be claimed exempt. *Id.*

The court in Woodson reasoned that the federal statutory exemption analog, found at § 522(d)(7) of the Bankruptcy Code, exempts only the ownership interest in an unmaturred life insurance policy, and not the proceeds the debtor may receive as a beneficiary of such policy. *Id.* And § 522(d)(7) has identical language section 703.140(b)(7) of the California Code of Civil Procedure, the exemption statute under which the debtor in this case claims the face value of two life insurance policies as exempt.

In this case, if the debtor holds the ownership interest in the two policies listed on Schedule C, then he must amend Schedule C to list the value of the policies at \$0.00 as the trustee contends, even if the debtor also is a beneficiary of the policies.

Accordingly, the trustee's objection is sustained. The court will issue a minute order.

19. [09-18148](#)-A-13 RICHARD/ROBIN CHAMBERS

MOTION TO APPROVE LOAN

LKW-4
RICHARD CHAMBERS/MV
LEONARD WELSH/Atty. for dbt.

MODIFICATION
8-23-12 [[99](#)]

Tentative Ruling. The debtors have filed a motion seeking the court's approval of a loan modification agreement between debtors and Wells Fargo Home Mortgage ("Wells Fargo"). The motion was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court denies the motion without prejudice.

First, the motion requests relief that, if granted, would modify a confirmed chapter 13 plan. However, this relief is sought in the absence of a motion to modify the plan. The loan modification applies to a loan that is placed in Class 4 in the current confirmed plan. See Debtors' Ch. 13 Plan § 3.15, Aug. 25, 2009, ECF No. 5. The motion proposes to decrease the total new payment to Wells Fargo to \$1,242.07 per month from the plan's current amount of \$2,186.76. In essence, the motion seeks to modify a confirmed plan apart from the correct procedure. The correct procedure for plan modification is a motion to modify. See Fed. R. Bankr. P. 3015(g); LBR 3015-1(d)(2).

Second, a request for approval of a loan modification by itself "does not present the [c]ourt with any case or controversy and essentially constitutes a petition for an advisory opinion or comfort order." *In re Wofford*, 449 B.R. 362, 365 (Bankr. W.D. Wis. 2011) (internal quotation marks omitted) (citing *In re Smith*, 409 B.R. 1, 5 (Bankr. D.N.H. 2009)). Such a request may be presented in the context of a dispute or action otherwise required under the Bankruptcy Code. *Id.* at 365 & n.6. Thus, a motion to modify a confirmed plan under § 1329 presents a sufficient case or controversy to allow the court to approve, in conjunction with the motion to modify, the request for a loan modification. See *id.*

The motion is denied without prejudice to refiling the motion in conjunction with a motion to modify the plan. The court will issue a minute order.

20. [12-10953](#)-A-13 ERNIE/BETSY CHAVEZ
RSW-2
ERNIE CHAVEZ/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-23-12 [[43](#)]

Final Ruling. This Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Fed. R. Bankr. P. 3012. The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *Cf.*, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 469108 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36 40-42 (9th Cir. BAP 1997); *In re Zimmer*, 313 F.3d 1220, 1222-1225 (9th Cir. 2002). A Motion to Value the debtor's principal residence should be granted upon a three-fold

showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the amount due liens senior to claim that is the subject of the valuation exceed the value of the principal residence. 11 U.S.C. §506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion will be granted. The motion seeks to value the debtor's residence located at 3708 Wyndham Avenue, Bakersfield, California. The court values the debtor's residence at \$225,000. That residence is encumbered by a first deed of trust held by Bank of New York Mellon in the amount of \$229,989. The property is also encumbered by a junior lien in favor of Bank of America in the amount of \$162,860. Because the amount owed to senior lien holders exceeds the value of the collateral, Bank of America's claim is wholly unsecured and no portion will be allowed as a secured claim. See, 11 U.S.C. §506(a).

The moving party shall prepare and lodge an order consistent with the findings herein.

21. [12-14759](#)-A-13 GARY PALMER
CEF-1
GARY PALMER/MV
CURTIS FLOYD/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-27-12 [[19](#)]

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); Cf., *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein.

22. [11-63961](#)-A-13 KENNETH/NANCY WORTHEN
RSW-3
KENNETH WORTHEN/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-27-12 [[55](#)]

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B);

cf., *Ghazali v. Moran*, 46 F.3d 52, 52 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein. The Chapter 13 trustee shall approve the order as to form and content.

23. [12-12662](#)-A-13 IRENE SAMPLE
MHM-2
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
FILE DOCUMENTS , MOTION TO
DISMISS CASE/PROCEEDING
7-9-12 [[27](#)]

ROBERT WILLIAMS/Atty. for dbt.

[This motion will be called subsequent to the Motion to Value
Collateral (Item No. 24.)]

No tentative ruling.

24. [12-12662](#)-A-13 IRENE SAMPLE
RSW-1
IRENE SAMPLE/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GE CAPITAL RETAIL BANK
8-23-12 [[31](#)]

Final Ruling. The debtor's motion to value collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The default of respondent creditor is entered, and the matter is resolved without oral argument. The court grants the motion.

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A Motion to Value the debtor's principal residence should be granted upon a three-fold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by

admissible evidence that the amount due liens senior to the claim that is the subject of the valuation exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value the debtor's residence located at 3505 Granite Creek Court, Bakersfield, California. The court values the debtor's residence at \$238,500.00. The residence is encumbered by a first deed of trust held by The Bank of New York Mellon c/o Ocwen Loan Servicing, LLC, securing a loan with a balance of \$425,911.93. The property is also encumbered by a junior deed of trust in favor of respondent creditor in the amount of \$31,768.00. Because the amount owed to senior lien holders exceeds the value of the collateral, respondent creditor's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Accordingly, the motion is granted. The moving party shall prepare and lodge an order consistent with the findings herein.

25. [12-13262](#)-A-13 JOSE/ANA GARCIA
PK-2
PATRICK KAVANAGH/MV

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S), FEE: \$4928.00,
EXPENSES: \$68.68
8-29-12 [[41](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling. This Motion for Compensation has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(a)(6) and Local Bankruptcy Rule 9014-1(f)(1). 11 U.S.C. §330. The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); see *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion is granted and, on an interim basis, Patrick Kavanagh is granted compensation for services rendered in the amount of \$4,928.00 and reimbursement for costs incurred of \$68.68. 11 U.S.C. §330(a) authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under §327 or 1103 and for "reimbursement for actual necessary expenses." In fixing reasonable compensation the court should consider "all relevant factors," including time spent, rates charged, whether the services were necessary or beneficial to the administration of the case, timeliness, board certification or other demonstration of skill, and reasonableness as judged by the compensation charged by comparably skilled practitioners in non-bankruptcy cases. 11 U.S.C. §330(a)(3).

The court finds that these services were reasonably likely to benefit the estate or were necessary to the administration of the case. A reasonable fee for these services is \$4,928.00. The court also finds that the moving party incurred actual, necessary expenses of \$68.68.

The court will issue a minute order awarding interim compensation of \$4,928.00 and costs of \$68.68. Said amounts shall be perfected, and

may be adjusted, by Final Motion for Compensation, which shall be filed prior to the closure of the case.

26. [10-11864](#)-A-13 DANIEL/APRIL RODRIGUEZ MOTION TO MODIFY PLAN
CRS-4 8-10-12 [[62](#)]
DANIEL RODRIGUEZ/MV
CYNTHIA SCULLY/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. The matter is continued to October 25, 2012, at 9:00 a.m. Not later than 14 days prior to the continued hearing the debtor shall file a supplemental declaration addressing the elements of 11 U.S.C. § 1325(a)(9).

Also not later than 14 days prior to the continued hearing the debtor and the Chapter 13 trustee shall file supplemental briefs addressing the following issues: (1) whether the Chapter 13 plan, filed February 25, 2010, binds the parties, given that the modified plan does not appear to change the treatment of secured claim of Safe One Credit Union, except as to the monthly dividend; (2) whether the payment of the under-secured portion of the Safe One Credit Union claim prior to general unsecured creditors unfairly discriminates under the four-prong test described in *In re Wolff*, 22 B.R. 510, 512 (B.A.P. th Cir. 1982); and (3) whether payment of interest on the under-secured portion of the Safe One Credit Union claim unfairly discriminates under the four-prong test described in *In re Wolff*, 22 B.R. 510, 512 (B.A.P. th Cir. 1982), with respect to general unsecured creditors who do not receive interest.

The court will allow insertion of language in the confirmation order, if obtained after the hearing on October 25, 2012, requiring a 100% dividend to unsecured creditors.

The court will issue a minute order.

27. [12-14969](#)-A-13 GREGORY/JANA MORGAN MOTION TO VALUE COLLATERAL OF
DMG-1 JP MORGAN CHASE BANK, N.A.
GREGORY MORGAN/MV 8-22-12 [[20](#)]
D. GARDNER/Atty. for dbt.

Final Ruling. The debtors' motion to value collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The default of respondent creditor is entered, and the matter is resolved without oral argument. The court grants the motion.

Chapter 13 debtors may strip off a wholly unsecured junior lien

encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A Motion to Value the debtor's principal residence should be granted upon a three-fold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the amount due liens senior to the claim that is the subject of the valuation exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value the debtors' residence located at 10611 Yosemite Falls Avenue, Bakersfield, California 93312. The court values the debtor's residence at \$179,000.00. The residence is encumbered by a first deed of trust held by Bank of America, N.A., securing a loan with a balance of \$199,281.05. The property is also encumbered by a junior deed of trust in favor of respondent creditor in the amount of \$57,187.27. Because the amount owed to senior lien holders exceeds the value of the collateral, respondent creditor's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Accordingly, the motion is granted. The moving party shall prepare and lodge an order consistent with the findings herein.

28. [12-14972](#)-A-13 MARK/FABIOLA BUTCHER CONTINUED MOTION TO VALUE
PK-3 COLLATERAL OF JPMORGAN CHASE
MARK BUTCHER/MV BANK, N.A.
7-11-12 [[33](#)]
PATRICK KAVANAGH/Atty. for dbt.
OPP BY WELLS FARGO BANK,
N.A.

Tentative Ruling. The motion resolved by stipulation of the parties, the court will either grant the motion, on the terms of the stipulation or drop the matter as moot.

29. [12-14972](#)-A-13 MARK/FABIOLA BUTCHER MOTION TO CONFIRM PLAN
PK-6 8-2-12 [[84](#)]
MARK BUTCHER/MV
PATRICK KAVANAGH/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. This is debtors' Motion to Confirm Chapter 13 plan pursuant to Local Bankruptcy Rule 3015-1(d)(1). 11 U.S.C. §§ 1322, 1325. The Chapter 13 trustee opposes confirmation, citing: (1) net operating loss on the debtor's rental property located at 8000 Kroll Way #76, Bakersfield, California; (2) net operating loss on 4809 Hahn Avenue #29, Bakersfield, California; and (3) inconsistent information associated with Mr. Butcher's Financial Services business. The Chapter 13 trustee's objection will be sustained.

The debtors are husband and wife. Mr. Butcher is self-employed; Ms. Butcher works at Kern Community College and Fresno Pacific University. The couple owns rental properties. The debtors and the Chapter 13 trustee agree they are below median income.

On August 2, 2012, the debtors filed their First Modified Chapter 13 plan. It proposes payments of \$2,007 per month for 60 months. Unsecured creditors will receive only 7.85%.

8000 Kroll Way #76

The debtors own rental property at 8000 Kroll Way #76, Bakersfield, California. The parties agree that operates at a net loss of \$433.77 per month. Opposition by Chapter 13 trustee at p. 2, September 12, 2012, ECF No. 113; Debtor's Reply, September 19, 2012, ECF No. 119. The Chapter 13 trustee objects that the debtors are not devoting all of their net disposable income to payment of creditors, citing the net operating loss. 11 U.S.C. § 1325(b). The debtors attempt to blunt this problem by offering to make up the loss from exempt cash in the amount of \$7,000.

The problem is that even if this is otherwise permissible, it will only resolve the problem for the first 16 months of a 60 month plan and leaves unsecured creditors short by \$433.77 per month. Accordingly, the objection will be sustained on that ground.

4809 Hahn Avenue #29

The debtors own rental property at 4809 Hahn Avenue #29, Bakersfield, California. This property suffers a similar problem. Rental income from the property is \$550 per month. The monthly mortgage payments, insurance, property taxes and homeowners association dues are \$527.53 per month, leaving profit of \$22.47. The Chapter 13 trustee contends that Line 17 of Schedule J shows an additional \$161.09 in rental expense. The court will neither sustain, nor overrule, the objection on this ground, as it is unable to verify this expense on Schedule J, which seems to show \$598.19 for all rentals.

Business Expense

The Chapter 13 trustee also objects to the business expense of \$388.30 on Line 16 of Form B22C, which is inconsistent with the expense of \$125 per month in the profit and loss statements provided. The objection is sustained on that ground.

Not later than 75 days from the date of the hearing hereon, the debtor shall confirm a plan. If the debtor fails to do so, the case will be dismissed on the motion of the Chapter 13 trustee or any party in interest.

30. [10-61075](#)-A-13 ROBERTO/REYNA HERNANDEZ MOTION TO MODIFY PLAN
RSW-3 8-3-12 [[36](#)]
ROBERTO HERNANDEZ/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The

failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *Cf.*, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein.

31. [12-10277](#)-A-13 FELIPE DOMINGUEZ RESCHEDULED STATUS CONFERENCE
UST-1 RE: MOTION FOR FINES AND
AUGUST LANDIS/MV PAYMENT TO DEBTOR
3-28-12 [[28](#)]
- ROBIN TUBESING/Atty. for mv.
OPPOSITION BY JUDE LOPEZ,
MARCELA GONZALEZ, AND CROWN
POINT EDUCATION, INC.

Final Ruling. The summary judgment granted, the matter is dropped from calendar as moot.

32. [12-10277](#)-A-13 FELIPE DOMINGUEZ MOTION FOR SUMMARY JUDGMENT
UST-3 8-24-12 [[73](#)]
AUGUST LANDIS/MV
ROBIN TUBESING/Atty. for mv.

Tentative Ruling. The United States Trustee ("Trustee") filed a motion for summary judgment on its claims against Marcela Gonzalez, Jude Lopez, and Crown Point Education, Inc. (the "Preparers") asserted in the Trustee's Motion for Fines and Payment to Debtor Pursuant to § 110. The motion was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *cf.* *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of respondent Preparers are entered. The court grants the motion.

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Civ. P. 56. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)).

A party may support or oppose a motion for summary judgment with affidavits or declarations that are "made on personal knowledge" and that "set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4). Failure "to properly address another party's assertion of fact as required by Rule 56(c)" permits the court to "consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). If facts are considered undisputed because a party fails to properly address them, the court may "grant summary judgment if the motion and supporting materials-including facts considered undisputed-show the movant is entitled to it." Fed. R. Civ. P. 56(e)(3).

The respondent Preparers have not responded to the motion. Their failure to properly address the Trustee's assertion of facts permits the court to consider the facts undisputed. Accordingly, based on the facts stated in the motion, memorandum in support, and supporting papers and exhibits, the court finds that relief is warranted.

Accordingly, the motion is granted. The Trustee will prepare and lodge an order consistent with this ruling.

33. [11-14979](#)-A-13 AURORA ARROYO RAMOS
SL-1
AURORA ARROYO RAMOS/MV

MOTION TO VALUE COLLATERAL OF
HOUSEHOLD FINANCE CORP OF
CALIFORNIA (HFC), MEMBER HSBC
GROUP
8-3-12 [[22](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling. The debtor's motion to value collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The motion was properly served; no opposition has been filed. Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The default of respondent creditor is entered, and the matter is resolved without oral argument. The court grants the motion.

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A Motion to Value the debtor's principal residence should be granted upon a three-fold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the amount due liens senior to the claim that is the subject of the valuation exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

Liens on multi-unit real property may be stripped off even if one of the units in the multi-unit property is the debtor's residence. *In re Scarborough*, 461 F.3d 406, 410-11 (3d Cir. 2006); see also Kathleen P.

March, Hon. Alan M. Ahart & Janet A. Shapiro, *Cal. Practice Guide: Bankruptcy* ¶¶ 18:222, 18:224 (rev. 2011).

The motion seeks to value the debtor's real property duplex located at 722 L. Street, Bakersfield, California 93304 ("Property"). The debtor's property is a duplex. The debtor's primary residence is located at 722 L. Street #A, Bakersfield, California. The value of the duplex is \$91,500.00. The duplex is encumbered by a first deed of trust held Chase securing a loan with a balance of \$102,783.26. The property is also encumbered by a junior deed of trust in favor of respondent creditor in the amount of \$33,326.84. Because the amount owed to the senior lien holder exceeds the value of the collateral, respondent creditor's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Accordingly, the motion is granted. The moving party shall prepare and lodge an order consistent with the findings herein.

34. [12-10687](#)-A-13 PATRICK/CHARMAINE LORELLI MOTION TO CONFIRM PLAN
RSW-1 7-27-12 [[44](#)]
PATRICK LORELLI/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling. This Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of parties in interest to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); *Cf., Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Beyond that, since the court will not materially alter the relief prayed an actual hearing is not required. *Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 601-602 (9th Cir. 2006). The matter is resolved without oral argument.

The motion will be granted. The plan complies with 11 United States Code sections 1322, 1323, 1325 and 1329.

The moving party shall prepare and lodge an order consistent with the findings herein.

35. [12-11991](#)-A-13 VICTOR/PATRICIA LOEZA CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
FILE DOCUMENTS , MOTION TO
DISMISS CASE/PROCEEDING
6-29-12 [[22](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

36. [11-10994](#)-A-13 HAL/ABBY FRIEDMAN CONTINUED MOTION TO SELL
RSW-1 6-14-12 [[37](#)]
HAL FRIEDMAN/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling. The matter was continued to allow the debtors to submit additional evidence. Civil Minutes, July 26, 2012, ECF No. 57. They have not done so. The motion will be denied for the reasons stated therein.

37. [11-10994](#)-A-13 HAL/ABBY FRIEDMAN CONTINUED MOTION TO MODIFY PLAN
RSW-2 6-14-12 [[41](#)]
HAL FRIEDMAN/MV
ROBERT WILLIAMS/Atty. for dbt.
ORDER CONFIRMING PLAN
8/23/12

Final Ruling. Having issued an order confirming the debtors' First Modified Chapter 13 Plan filed June 14, 2012, the hearing is dropped from calendar.

38. [12-15096](#)-A-13 ELPIDIO/ALICIA GONZALEZ MOTION TO CONFIRM PLAN
DMG-1 8-9-12 [[22](#)]
ELPIDIO GONZALEZ/MV
D. GARDNER/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. The debtors' motion to confirm a chapter 13 plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The trustee opposes the motion and requests that the court deny confirmation of the plan. The court denies the motion without prejudice for the following reasons.

Chapter 13 debtors seeking plan confirmation have the burden of proving that each element of § 1325 of Title 11 has been met. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995). The debtors have not meet their burden.

First, the debtors' plan does not fund within 60 months. The plan payment must increase to \$398.86 per month for months 1 through 60 to fund properly.

Second, for the reasons stated by the trustee, the plan does not meet the liquidation requirement of § 1325(a)(4). Based on the debtors' schedules, unsecured creditors should receive at least \$54,089.96. The debtors amended Schedules A and D show that debtors' real property located at 10601 Sheridan Street, California City, California, has a value of \$70,000.00. See Am. Schedules A & D, Aug. 8, 2012, ECF No. 18. The only claim secured by such real property is Kern County Tax Collector's claim in the amount of \$10,461.84. The difference between the property's value and the secured claim of Kern County results in equity of \$59,538.16. Adding the non-exempt assets of \$13,840.00 to the amount of equity in the property, and then subtracting the wildcard exemption of \$5,338.00, results in non-exempt assets of \$68,040.16. The debtors' plan, however, pays \$19,950.00 to unsecured

interest rate. See 11 U.S.C. §§ 506(b), 511(a), 1325(a)(5)(B); Cal. Rev. & Tax Code § 4221(d) (providing for a 1.5 percent monthly interest rate on defaulted tax claims).

Not later than 14 days after entry of the civil minute order, the debtors shall file a modified Chapter 13 plan and shall file, serve, and set for hearing a motion to confirm the modified Chapter 13 plan, as well as required supporting documents.

Accordingly, the objection is sustained. The court will issue a civil minute order.

40. [12-14897](#)-A-13 MARI/TIMOTHY FERRELL MOTION TO CONFIRM PLAN
8-8-12 [[37](#)]
MARI FERRELL/MV
KELLY RYAN/Atty. for dbt.
CASE DISMISSED 9/3/12

Final Ruling. The case dismissed on September 3, 2012, the matter is dropped as moot.

41. [08-18698](#)-A-13 CUTBERTO/MERANDA MOTION TO MODIFY PLAN
PWG-1 GUTIERREZ 7-19-12 [[62](#)]
CUTBERTO GUTIERREZ/MV
PHILLIP GILLET/Atty. for dbt.
OPPOSITION BY TRUSTEE

Tentative Ruling. The debtor's motion to modify the confirmed chapter 13 plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The trustee opposes the motion and requests that the court deny confirmation of the modified plan. The court denies the motion without prejudice.

"[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996). Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of 11 U.S.C. § 1325(a) have been met. See 11 U.S.C. §1329(b)(1); *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996) ("Furthermore, § 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

Here, the claim does not fund in 60 months. See 11 U.S.C. § 1322(d). The plan payment is insufficient to cover the monthly dividends under the plan, which makes the plan infeasible. See 11 U.S.C. § 1325(a)(6). No amended Schedules I and J have been filed since the case commenced in 2008.

Additional provisions 6.01 through 6.08 must be stricken in the order confirming the plan. Furthermore, the order confirming the plan must state that debtors have paid the aggregate amount of \$127,635.39 for

months 1 to 44 to the trustee, and then state what the plan payment will be for months 45 to 60.

Finally, the certificates of service do not show that the motion to modify has been noticed to all creditors as required by Federal Rule of Bankruptcy Procedure 3015(g).

Accordingly, the motion is denied. The court will issue a minute order.

42. [11-11298](#)-A-13 WHITNEY/RACHELLE EARLS MOTION FOR RELIEF FROM
RSL-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 8-30-12 [[53](#)]
JACOB EATON/Atty. for dbt.
ROBERT LAMPL/Atty. for mv.
WITHDRAWN 9/17/12

Final Ruling. The motion having been withdrawn, the hearing is dropped from calendar.

9:15 a.m.

1. [12-10827](#)-A-13 JAMES HOOVER CONTINUED STATUS CONFERENCE RE:
[12-1025](#) COMPLAINT
HOOVER V. BASSET 2-8-12 [[1](#)]
ANSWER BY DEFENDANT

No tentative ruling.

2. [12-10827](#)-A-13 JAMES HOOVER MOTION FOR LEAVE TO AMEND THE
[12-1025](#) PWG-1 COMPLAINT
HOOVER V. BASSET 9-13-12 [[47](#)]
PHILLIP GILLET/Atty. for mv.
OPPOSITION BY DEFENDANT

No tentative ruling.

3. [08-16430](#)-A-13 MARIE EVERETT-ALANIZ STATUS CONFERENCE RE: COMPLAINT
[12-1124](#) 7-17-12 [[1](#)]
MEYER V. OCWEN LOAN SERVICING,
LLC
SARAH VELASCO/Atty. for pl.

No tentative ruling.

4. [12-14137](#)-A-13 BERNARD GRAY CONTINUED STATUS CONFERENCE RE:
[12-1089](#) COMPLAINT
U.S. TRUSTEE V. GRAY 5-22-12 [[1](#)]
MARK POPE/Atty. for pl.
JUDGMENT ENJOINING DEBTOR
FROM FILING A CH. 13
BANKRUPTCY FOR TWO YEARS
FILED 9/6/12

Final Ruling. Default judgment being entered and the adversary proceeding closed, the status conference is concluded.

9:30 a.m.

1. [12-15713](#)-A-13 BEATRICE ZAPATA OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY MICHAEL H. MEYER
MICHAEL MEYER/MV 8-30-12 [[18](#)]
NEIL SCHWARTZ/Atty. for dbt.

No tentative ruling.

2. [12-15713](#)-A-13 BEATRICE ZAPATA MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 8-31-12 [[21](#)]
NEIL SCHWARTZ/Atty. for dbt.

No tentative ruling.

3. [12-15219](#)-A-7 GERARDO HERNANDEZ MOTION TO DISMISS CASE FOR
MHM-1 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
8-20-12 [[18](#)]

MICHAEL RIVERA/Atty. for dbt.
REQUEST TO CONVERT TO
CHAPTER 7 FILED 9/13/12

Final Ruling. The case converted to chapter 7, the motion is dropped as moot.

4. [12-15922](#)-A-13 JOHN/TERESA OLAGUE OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MICHAEL MEYER/MV MEYER
8-30-12 [[31](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

5. [12-14523](#)-A-13 ALAN GUINTO
MHM-2
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
- MOTION TO DISMISS
CASE/PROCEEDING
8-20-12 [[19](#)]

No tentative ruling.

6. [12-15224](#)-A-13 MICHAEL MADDEN
MHM-2
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
CASE DISMISSED 8/30/12
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-28-12 [[19](#)]

Final Ruling. The case dismissed, the motion is dropped as moot.

7. [12-15726](#)-A-13 ALVARO PINON
MHM-1
MICHAEL MEYER/MV
- THOMAS GILLIS/Atty. for dbt.
WITHDRAWN 9/18/12
- OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
8-28-12 [[21](#)]

Final Ruling. The objection withdrawn, the matter is dropped as moot.

8. [12-13231](#)-A-13 DAVID/LYDIA EDWARDS
MHM-2
MICHAEL MEYER/MV
- ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
8-7-12 [[23](#)]

No tentative ruling.

9. [12-14037](#)-A-13 RITA AGCAOILI
MHM-1
MICHAEL MEYER/MV
- RICHARD BAMBL/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
8-20-12 [[33](#)]

No tentative ruling.

10. [12-15843](#)-A-13 TRIVELL/LETICIA JACKSON
MHM-1
MICHAEL MEYER/MV
- RABIN POURNAZARIAN/Atty. for dbt.
- RESPONSE BY DEBTORS
- No tentative ruling.**
11. [12-15047](#)-A-13 CHARLES DAVIS
MHM-2
MICHAEL MEYER/MV
- WILLIAM OLCOTT/Atty. for dbt.
- No tentative ruling.**
12. [12-15849](#)-A-13 RAFAEL/MARTHA MOJICA
MHM-1
MICHAEL MEYER/MV
- PHILLIP GILLET/Atty. for dbt.
- No tentative ruling.**
13. [12-10953](#)-A-13 ERNIE/BETSY CHAVEZ
MHM-3
MICHAEL MEYER/MV
- ROBERT WILLIAMS/Atty. for dbt.
- No tentative ruling.**
14. [11-62054](#)-A-13 ANTHONY/CHERI CHAVEZ
MHM-3
MICHAEL MEYER/MV

OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER AND/OR
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS ,
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE FOR FAILURE TO FILE
DOCUMENTS
8-28-12 [[19](#)]

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
9-13-12 [[20](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-30-12 [[16](#)]

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
8-7-12 [[39](#)]

AMENDED MOTION TO DISMISS CASE
FOR UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS ,
AMENDED MOTION TO DISMISS
CASE/PROCEEDING

8-20-12 [[95](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.

15. [11-19860](#)-A-13 LOUIE/KATHRYN MONDRAGON
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO FILE DOCUMENTS
8-24-12 [[39](#)]

No tentative ruling.

16. [12-15261](#)-A-13 ALVARO/LILIA LOPEZ
MHM-2
MICHAEL MEYER/MV
NIMA VOKSHORI/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-29-12 [[26](#)]

Final Ruling. The case dismissed, the motion is dropped as moot.

17. [12-15265](#)-A-13 ROXANE CASTILLO
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO FILE DOCUMENTS
9-10-12 [[79](#)]

FRANCISCO ALDANA/Atty. for dbt.

No tentative ruling.

18. [11-18869](#)-A-13 CHRISTOPHER/LESLIE
MHM-3 DEARMON
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO DISMISS
CASE/PROCEEDING
8-21-12 [[89](#)]

No tentative ruling.

19. [12-14972](#)-A-13 MARK/FABIOLA BUTCHER
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN 9/19/12

MOTION TO DISMISS
CASE/PROCEEDING
8-20-12 [[100](#)]

No tentative ruling.

20. [12-15382](#)-A-13 DARRYL BANTON MOTION TO DISMISS
MHM-1 CASE/PROCEEDING
MICHAEL MEYER/MV 8-20-12 [[17](#)]
NICHOLAS NASSIF/Atty. for dbt.
WITHDRAWN 9/12/12

Final Ruling. The motion withdrawn, the matter is dropped as moot.

21. [12-15382](#)-A-13 DARRYL BANTON MOTION TO DISMISS CASE FOR
MHM-2 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS
CASE/PROCEEDING
9-10-12 [[22](#)]
NICHOLAS NASSIF/Atty. for dbt.

No tentative ruling.

22. [11-19585](#)-A-13 RUBEN/ANNABELLE MORENO MOTION TO DISMISS
MHM-1 CASE/PROCEEDING
MICHAEL MEYER/MV 8-24-12 [[25](#)]
D. HARELIK/Atty. for dbt.

Final Ruling. The case converted to chapter 7, the motion is dropped as moot.

23. [12-16091](#)-A-13 FELICIANO MACARAEG OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MICHAEL MEYER/MV MEYER AND/OR MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS
8-29-12 [[14](#)]

No tentative ruling.

24. [12-15994](#)-A-13 SANTIAGO PEREZ OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MICHAEL MEYER/MV MEYER AND/OR MOTION TO DISMISS
CASE/PROCEEDING
8-29-12 [[16](#)]
WILLIAM OLCOTT/Atty. for dbt.

No tentative ruling.

25. [12-15899](#)-A-13 CHRISTOPHER JEROME
MHM-1
MICHAEL MEYER/MV

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER AND/OR MOTION TO DISMISS
CASE/PROCEEDING
8-29-12 [[15](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN 9/19/12

Final Ruling. The objection withdrawn, the matter is dropped as moot.

11:00 a.m.

1. [12-14300](#)-A-7 ARTURO/BERNICE HERNANDEZ

PRO SE REAFFIRMATION AGREEMENT
WITH KERN SCHOOLS FEDERAL
CREDIT UNION
8-17-12 [[14](#)]

MICHAEL RAICHELSON/Atty. for dbt.

Final Ruling. The hearing having been noticed in error and a Notice to Disregard issued, the matter is dropped as moot.

2. [12-14300](#)-A-7 ARTURO/BERNICE HERNANDEZ

PRO SE REAFFIRMATION AGREEMENT
WITH KERN SCHOOLS FEDERAL
CREDIT UNION
8-17-12 [[16](#)]

MICHAEL RAICHELSON/Atty. for dbt.

Final Ruling. The hearing having been noticed in error and a Notice to Disregard issued, the matter is dropped as moot.

3. [12-16916](#)-A-7 SANDRA NEEL

PRO SE REAFFIRMATION AGREEMENT
WITH KERN SCHOOLS FEDERAL
CREDIT UNION
9-6-12 [[10](#)]

No tentative ruling.

4. [12-15467](#)-A-7 CINDY GEORGE

REAFFIRMATION AGREEMENT WITH
INFINITI FINANCIAL SERVICES
8-20-12 [[14](#)]

MICHAEL FINLEY/Atty. for dbt.

No tentative ruling.

5. [12-14383](#)-A-7 MISTY ARMSTRONG

PRO SE REAFFIRMATION AGREEMENT
WITH ALL VALLEY FEDERAL CREDIT
UNION
8-13-12 [[16](#)]

No tentative ruling.

1:30 p.m.

1. [11-62772](#)-A-13 JOHN/BETH NEMETH
ALS-3
POPA FEDERAL CREDIT UNION/MV

CONTINUED MOTION TO COMPEL
AND/OR MOTION TO COMPEL ,
MOTION FOR SANCTIONS
6-28-12 [[136](#)]

PHILLIP GILLET/Atty. for dbt.
A. SIMON/Atty. for mv.
OPPOSITION BY DEBTOR, TO BE
CONTINUED TO OCTOBER DATE BY
STIPULATION OF PARTIES

Final Ruling. Pursuant to stipulation of the parties, this matter is
continued to October 25, 2012, at 9:00 a.m.

2. [11-62772](#)-A-13 JOHN/BETH NEMETH CONTINUED MOTION TO CONFIRM
PWG-1 PLAN
JOHN NEMETH/MV 3-15-12 [[62](#)]
PHILLIP GILLET/Atty. for dbt.
OPPS BY TRUSTEE, POPA FCU,
TO BE CONTINUED TO OCTOBER
DATE BY STIPULATION OF
PARTIES

Final Ruling. Pursuant to stipulation of the parties, this matter is continued to October 25, 2012, at 9:00 a.m.

3. [11-62772](#)-A-13 JOHN/BETH NEMETH CONTINUED MOTION TO VALUE
PWG-2 COLLATERAL OF POPA FEDERAL
JOHN NEMETH/MV CREDIT UNION
3-27-12 [[83](#)]
PHILLIP GILLET/Atty. for dbt.
OPPOSITION BY POPA FCU, TO
BE CONTINUED TO OCTOBER DATE
BY STIPULATION OF PARTIES

Final Ruling. Pursuant to stipulation of the parties, this matter is continued to October 25, 2012, at 9:00 a.m.

4. [11-62772](#)-A-13 JOHN/BETH NEMETH CONTINUED MOTION FOR PROTECTIVE
PWG-4 ORDER
JOHN NEMETH/MV 7-12-12 [[159](#)]
PHILLIP GILLET/Atty. for dbt.
OPPOSITION BY POPA FCU, TO
BE CONTINUED TO OCTOBER DATE
BY STIPULATION OF PARTIES

Final Ruling. Pursuant to stipulation of the parties, this matter is continued to October 25, 2012, at 9:00 a.m.