**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

**November 25, 2014 at 3:00 p.m.**

---

**1. 13-26601-E-13 CASSANDRA HUAPAYA — MOTION TO MODIFY PLAN**
**RJ-3 Richard Jare — 10-2-14 [81]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

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

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 October 17, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Cassandra Huapaya ("Debtor") filed the Motion to Modify Chapter 13 Plan on October 2, 2014. Dckt. 81. Debtor proposes to modify her plan to address some payment delinquencies due to traffic tickets an unexpected child support garnishments. Debtor states that those circumstances are over, but she is now on disability for about two months. Debtor will resume payments by paying the two payments due under the modified plan prior to the hearing date.

**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed an objection to the Motion to Modify on November 5, 2014. Dckt. 87. The Trustee objects to the modified

plan on the basis that:

1. Debtor is delinquent and it appears that Debtor cannot make the payments required. Debtor is delinquent $360.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $6,410.00 have become due. Debtor has paid a total of $6,050.00 to the Trustee, with the last payment posted October 21, 2014 of $150.00, not the proposed payment under the plan of $510.00.

2. Debtor's Declaration does not adequately explain the changes in her income and expenses. Debtor appears below median income and the plan proposes payments of $510.00 a month for October and November 2014, then $640.00 a month for 42 months to complete a 60 month plan. The Trustee notes the following changes between Debtor's original Schedules I & J to Debtor's Amended Schedules I & J (Dckt. 85):

   a. Debtor's income now comes solely from anticipated disability benefits at $2,800.00. She no longer receives employment pay of $2,425.66. The Amended Schedules show that Debtor's "ex" no longer pays "car income" to Debtor. Debtor's IHSS income has increased from $250.00 to $800.00, but this amount is suspended while she is on disability. Debtor also expects $340.00 in future tax returns.

   b. Debtor's expenses show that Debtor's rent has decreased by $100.00; her electricity/heat, TV and internet, and grocery expenses have increased by $185.01 total; her childcare costs have decreased from $250.00 to zero; transportation has increased by $219.34, but vehicle insurance has decreased by $80.00. Debtor's expenses for traffic fines has increased to $200.00 from zero.

3. The Plan may not pay creditors to the best effort of Debtor under 11 U.S.C. § 1325(b). Debtor's amended Schedule I appears to be based on anticipated disability benefits, but Debtor states that she will be on disability for only about 2 months. Debtor's Amended Schedule I lists Debtor's occupation as a medical assistant, but is on leave from David Teicheira, MD, PC, and has just applied for disability benefits. It appears that when Debtor is able to return to work, she will return to the same employer. Debtor does not explain why her IHSS income has increased by $550.00. It appears that Debtor's income, after she returns to work, would be $3,565.66. With monthly expenses shown as $2,500.01 in Amended Schedule J, Debtor could possibly afford a plan payment of $1,156.00. Debtor's modified plan payment proposes $5,900.00 total paid in for the first 16 months, $510.00 for months 17 and 18, and then $640.00 for 42 months. Debtor provides no explanation for the $200.00 per month now budgeted for traffic fines. Schedule J shows that the remaining balance for the fines is $2,000.00. The Trustee calculates that this debt should be paid in 10 months, and Debtor would have an additional $200.00 in disposable income.

4. Debtor's Amended Schedule I no longer shows the $160.00 monthly contribution for her children's father as car income, based on her son's unspecified medical condition. The Trustee is concerned whether Debtor can afford the plan payment with any ongoing medical expenses. Debtor also provides no explanation for the $250.00 decrease in childcare., but this may be based on the serious medical condition. Debtor may not have childcare costs for her daughter at this time due to her temporary leave, but this explanation is not provided, nor does Debtor explain how she will be able to afford this expense when she returns to work. Debtor has made other adjustments in her expenses, which have not been explained. The Trustee is concerned that Debtor's rent has decreased by $100.00 when it appears she resides in the same place. Debtor also provides no explanation for a $219.34 increase in transportation costs, when Debtor remains with the same employer, has not moved, and is currently on disability. Other adjustments have not been explained, either.

5. Debtor's proposed modified plan states that Class 2 creditor, Nationwide West, LLC, will have received $900.00 total from the Trustee by the confirmation hearing. To date, the Trustee has disbursed $878.26. Debtor's proposed modified plan states that Class 2 creditor Tidewater Finance Company will have received $2,400.00 in Trustee disbursements by the confirmation hearing. The Trustee has disbursed $2,285.51.

**DEBTOR'S REPLY**

Debtor filed a reply to the Trustee's Objections on November 8, 2014. Dckt. 90. Debtor concedes that she will not be able to confirm this modified plan and consents to the denial of the Motion.

**DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. However, the Trustee's objections are well-taken. Debtor has failed to satisfactorily explain the changes listed in her Amended Schedules I and J. Debtor is also not current on the payments due under this plan. Further, Debtor has acknowledged the deficiencies in this plan and consents to its denial.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

**2. 14-29404-E-13 CYNTHIA GREEN**
**DPC-1 Gary Greule**
**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**10-29-14 [17]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 29, 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, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Cynthia Green ("Debtor") failed to appear at the First Meeting of Creditors on October 23, 2014. The Trustee does not have sufficient information to determine whether or not this case is

suitable for confirmation with respect to 11 U.S.C. § 1325.

2. Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Tax Return with attachments for the most recent pre-petition tax year for which a return was required or a written statement that no such documentation exists.

3. Debtor has failed to provide the Trustee with her Employer Payment Advices received 60 days prior to filing, under 11 U.S.C. § 521(a)(1).

4. Debtor cannot make the payments under the plan or comply with the plan because Debtor has not yet filed a Motion to Value Collateral. Debtor proposes to value the secured claim of Nationstar Mortgage in Class 2, but has not filed a motion to value the collateral.

5. Debtor's Plan fails to provide for Springleaf's judgment lien listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5). Failure to provide treatment could indicate that Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that Debtor wants to conceal the proposed treatment of the creditor.

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).

Further, the Trustee asserts that Debtor has failed to file pay advices and tax return documents which are required to be filed with the Trustee in 11 U.S.C. § 521. The failure to comply with other requirements in the Bankruptcy Code is grounds to deny confirmation of the Plan. 11 U.S.C. § 1325(a)(1).

Additionally, the Trustee objected that Debtor's Plan depends on a Motion to Value which has not yet been filed. If the Motion is neither filed nor granted, the plan may not be feasible. This is grounds to sustain the objection. 11 U.S.C. § 1325(a)(6).

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the

objection.

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.

**3. 14-29407-E-13 VINCENT GONZALES**
**DPC-2 Gerald Glazer**

**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**10-29-14 [14]**

**BECAUSE THE DEBTOR IS DECEASED AND NO PERSONAL REPRESENTATIVE HAS BEEN APPOINTED BY THE COURT PURSUANT TO FED. R. CIV. P. 25, THE MATTER IS NOT REMOVED FROM THE CALENDAR**

**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 October 29, 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.**

Though on November 21, 2014 the Chapter 13 Trustee filed a Notice of Withdrawal of Objection to Confirmation, the Objection discloses that the

Debtor is deceased. The court has not appointed a personal representative for the deceased, with the purported power of attorney having expired upon the death of the Debtor as a matter of California law. Cal. Prob. § 4152(a)(4); with no specific statutory exception for federal judicial proceedings having been presented to the court. The court must first appoint a personal representative for the interests of the decedent in these proceedings; Fed. R. Civ. P. 25 and Fed. R. Bankr. P. 7025, 9014; and then make a determination of whether this Chapter 13 case can be further administered in the best interests of the parties, Fed. R. Bankr. 1006. No such appointment has been made and no determination of administration has been made by the court.

**REVIEW OF OBJECTION AND PLAN**

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

1. Vincent Gonzales ("Debtor") is deceased. The petition was filed by Debra Gonzales, Power of Attorney, for Debtor. Ms. Gonzales appeared at the Meeting of Creditors on October 23, 2014 and advised the Trustee that Debtor passed away six (6) days after filing of this case. The Meeting of Creditors was continued to November 20, 2014.

2. The Trustee has not been provided proof of power of attorney to date.

3. Debtor has failed to file his tax transcript or a copy of his Federal Income Tax Return for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.

4. It appears that the Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals $173,849.00 and Debtor proposes a 1% dividend to unsecured creditors. This totals $704.35. The non-exempt equity is from real property located at 991 Farnham Avenue, Woodland, California listed on Schedule A. Debtor used an incorrect exemption (California Code of Civil Procedure § 704.950) on Schedule C to try to exempt the equity in the property. Debtor exempted $175,000.00 under California Code of Civil Procedure § 704.950 for a declared homestead. Debtor has failed to provide a declared homestead to the Trustee to date. Trustee's Objection to Exemption is set for hearing on December 9, 2014.

The Trustee alleges that the Debtor has deceased shortly after the case was filed. Although not in itself a reason to deny confirmation, it does reflect that Debtor will not be able to make plan payments, as Debtor does not have the capacity to make any sort of payments. 11 U.S.C. § 1325(a)(6). Additionally, because the Trustee has no received power of attorney documents, this also indicates that there may be no legal entity that can act on Debtor's behalf in this case.

Further, the Trustee asserts that Debtor has failed to file tax return documents which are required to be filed with the Trustee in 11 U.S.C. § 521. The failure to comply with other requirements in the Bankruptcy Code is grounds

to deny confirmation of the Plan. 11 U.S.C. § 1325(a)(1).

Finally, the Trustee alleges that the Plan will pay unsecured creditors a total of $704.35, when under a hypothetical Chapter 7 liquidation, unsecured creditors would receive approximately $173,849.00 total, should the Trustee's objection to exemption be sustained. This indicates that the Plan does not meet the required liquidation analysis for plan confirmation. 11 U.S.C. § 1325(a)(4).

**COURT'S REVIEW OF PLAN**

The proposed Chapter 13 Plan "requires" the deceased Chapter 13 Debtor to make $125.00 a month payment for thirty-six months. No Class 1 Claims are to be paid. No Class 2 Claims are to be paid. No Class 3 Claims are to be paid. One Class 4 Claim is to be paid directly by the "Debtor," in the amount of $1,087.75 a month to Bank of America (presumably Bank of America, N.A. and not one of the other 17 entities with the words "Bank of America" in their names). No Class 5 Claims are to be paid. No Class 6 Claims are to be paid. For Class 7, a projected $70,000.00 in general unsecured claims are to be paid a 1% dividend – $700.00.

Debtor's income consists of $1,798.00 in Social Security and $1,379.60 in retirement/pension a month. Schedule I, Dckt. 1 at 22. Presumably, this monthly income has terminated at Debtor's death. No explanation is given how the deceased Debtor will fund the Plan for thirty-six months.

The $125.00 a month will fund paying the deceased Debtor's counsel $2,000.00 of his $3,000.00 in legal fees and the Chapter 13 Trustee's fees. Assuming 8% of the plan payments for Chapter 13 Trustee fees and expenses, that leaves $115.00 a month to fund the plan. Eighteen months of the plan consumers the payments to pay counsel the $2,000.00. Assuming no other administrative expenses, there would be $2,185.00 to disburse on the $70,000.00 of general unsecured claims. This would increase the dividend to 3% from the 1% guaranteed under the Plan.

No explanation has been provided as to why a 3% dividend is in good faith, reasonable, and consistent with the Bankruptcy Code in light of the Debtor having passed away six days into this case. Debtor has no spouse. Statement of Financial Affairs Question 16, Dckt. 1 at 30. It appears that this bankruptcy case has been filed to preclude the proper administration of the deceased Debtor's probate estate rather than a good faith rehabilitation of an individual debtor's finances. This appears to be a case where the deceased Debtor is merely the proxy for third-parties who seek to have their personal financial interests advance under the guise of the Debtor.

The court has not made a determination that this case can be properly administered. Fed. R. Bankr. P. 1016. The court will not confirm the Plan and have the case proceed without first determining that such continued administration is in the best interests of all of the parties.

At the November 25, 2014, the Chapter 13 Trustee explained that he believes the plan should be confirmed and the administration of this case proceed notwithstanding the Debtor having passed away six days into this case as follows.

A.

B.

C.

D.

Counsel for the deceased Debtor addressed the issue of the continued administration of this case, the failure to file a Notice of Death and the failure to obtain the appointment of a personal representative for the Debtor (Fed. R. Civ. P. 25; Fed. R. Bankr. P. 7025, 9014) FN.1. as follows:

A.

B.

C.

D.

---

FN.1. Federal Rule of Civil Procedure 25(a) provides that if a motion to substitute a personal representative for a deceased party is not filed within 90 days after the Notice of Death, then the action shall (not may) be dismissed. No personal representative being appointed, the court does not have before it the real parties in interest with claims or controversy for which federal judicial power may properly be exercised by federal judges. U.S. Const. Art. III, Sec. 2.

---

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), and there is no "debtor" in this case who may prosecute the case. 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.

**4. 13-30914-E-13 MICHAEL SIMMS**
**PGM-1 Peter Macaluso**

**MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY(S)**
**10-24-14 [64]**

**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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 24, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The Motion for Allowance of Professional Fees is granted.**

**FEES REQUESTED**

Peter Macaluso, the Attorney ("Applicant") for Michael Simms the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period August 17, 2013 through April 8, 2014. The Motion states with particularity (Fed. R. Evid. 9013) the following grounds upon which the fees are requested:

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 6.3 hours in this

category.

1. Applicant assisted Client with reviewing documents and opening a case file.

2. Prepared petition, schedules, plan, and Form B22.

3. Received and calendared 341 meeting notice and sent letter to client.

4. Prepared and sent letters to client regarding filing fee instalments and instructions to client with a copy of the Petition.

5. Reviewed and responded to Trustee's email regarding addresses for DSO recipients.

6. Reviewed and calendared OSC and sent letter to client.

7. Received and reviewed Notice of Timely Filed Claims and sent letter to client. (Anticipated)

Significant Motions and Other Contested Matters: Applicant spent 4.55 hours in this category.

1. Applicant received and reviewed Trustee's Objection to Confirmation.

2. Applicant appeared for hearing on the Objection to Confirm.

3. Met with client to prepared supplemental documents.

4. Prepared and filed Declaration and Exhibits in support of Objection to Confirmation. (Dckt. 36, 37).

5. Appeared for hearing on Objection to Confirmation of Plan and sent letter to client regarding the outcome.

6. Prepared and sent Order Confirming Plan.

**Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the

> administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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 Plan confirmation. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES ALLOWED**

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

| **Names of Professionals and Experience** | **Time** | **Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| Peter Macaluso | .7 | $200.00 | $140.00 |
| Peter Macaluso | 10.15 | $300.00 | $3,045.00 |
| **Total Fees For Period of Application** | | | $3,185.00 |

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,185.00 subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

**OPPOSITION**

Trustee does not oppose the full amount just that the total compensation be reduced by $300.00 since the Disclosure of Compensation of Attorney for Debtor indicated that “Prior to filing of this statement [Applicant has] received $300.00." (Dckt. 1, Pg. 35). Beyond this reduction the Trustee has no opposition.

**RESPONSE**

Applicant has filed a response by amending the 2016(b) statement, indicating that no monies were receive prior to the filing of the Chapter 13. No declaration is provided or explanation provided for this inconsistent statement with the certification by counsel that $300.00 was received by counsel. The court authorized the Debtor to pay the filing fees in installments, sot he $300.00 cannot represent those amounts.

On November 18, 2014, an Amended Disclosure of Compensation was filed which does not state that $300.00 was received prior to the commencement of this case. No statement is included as to the reason for the amendment or stating that the prior Disclosure contained a typographical error.

The Amended Disclosure of Compensation having been filed and the large amount of fees received by counsel for the bankruptcy cases he files in this District, the court interprets the amendment and certification thereof to be a statement that the original Disclosure to have contained a typographical error. Given the very modest dollar amount at issue, a misrepresentation of such dollar amount is incongruent with economic reality, as well as counsel's reputation developed over years of appearances in this District.

**DISCUSSION**

Since the Applicant has cured the only concern the Trustee noted in their opposition and the court finds the amount requested reasonable, the full amount will be granted.

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

Fees $3,185.00

pursuant to this Application and $3,185.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for th 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 Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 3,185.00
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

**5. 14-25114-E-13 TIMOTHY/AMBER BOLLMANN MOTION TO CONFIRM PLAN**
**JSO-3 Jeffrey Ogilvie 10-7-14 [49]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

**The Motion to Confirm the Amended Plan is granted.**

Timothy and Amber Bollman ("Debtors") filed the Motion to Confirm First Amended Plan on October 7, 2014. Dckt. 49

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 October 7, 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.

**6. 14-27015-E-13 MARY BURKE — MOTION TO CONFIRM PLAN**
**PGM-1 Peter Macaluso — 10-9-14 [36]**

**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 October 9, 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.**

Mary Burke ("Debtor") filed the Motion to Confirm her First Amended Plan on October 9, 2014. Dckt. 36. Debtor proposes a monthly payment of $1,905.00 starting October 2014 and continuing for the duration of the 60 month plan.

**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed an objection to this Motion on October 29, 2014. Dckt. 44. The Trustee objects because it is not clear that

Debtor can make the proposed plan payment. Debtor lists $41.00 on Schedule J for food and housekeeping expenses. This seems very low for one person. Debtor admitted at the First Meeting of Creditors on August 7, 2014 that the expenses listed for the newspaper route she covers have been reduced, since she changed routes. Debtor appears to show income of $400.00 from her son's rent, but has not received this in the past two years or year to date and has no declaration supporting this income. Further, Debtor has amended her Schedule J twice and has not explained the changes made.

**DEBTOR'S REPLY**

Debtor filed a reply to the Trustee's Objection on November 10, 2014. Dckt. 47. Debtor states that the $41.00 expense for food and housekeeping was a scrivener's error or a computer glitch. FN.1. Debtor did not intend that figure to be her food budget. Debtor's Counsel had to upgrade his computer system due to software errors that unexplainably corrupted client files. Debtor has included a Declaration of Debtor's son, Kalen Burke, in which he testifies that he will pay her $400.00 a month in rent to assist her in her Chapter 13.

---

FN.1. Debtor's reply states that the $41.00 expense is in error, but the Reply does not offer an alternative figure or state when this erroneous entry will be corrected.

---

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Although the Declaration of Kalen Burke may address the Trustee's concern that the $400.00 rent payment will never materialize, Debtor has not corrected the erroneous $41.00 food and housekeeping expense figure. Debtor has also not explained the other changes made to Schedule J that the Trustee mentioned in his Objection. Without corrections and explanations for changes in Schedule J, the court cannot be sure that Debtor will be able to make the payments proposed under the Plan.

Though not referenced in the Opposition, the Debtor did file a Second Amended Schedule J on October 13, 2014. Dckt. 42. Debtor previously filed a First Amended Schedule J on August 15, 2014. Dckt. 20. The Debtor's statement of expenses under penalty of perjury evolve as follows:

| **Expense** | **Original Schedule J, Dckt. 1** | **First Amended Schedule J, Dckt. 20** | **Second Amended Schedule J, Dckt. 42** |
|---|---|---|---|
| | | | |
| **Home Maintenance, Repairs** | $50.00 | $50.00 | $50.00 |
| **Electricity, Heat** | $230.00 | $230.00 | $230.00 |
| **Water, Sewer, Garbage** | $207.00 | $207.00 | $207.00 |
| **Phone, Cable, Internet** | $245.00 | $245.00 | $245.00 |

| | | | |
|---|---|---|---|
| **Food, Housekeeping Supplies** | $41.00 | $391.00 | $391.00 |
| **Clothing, Laundry** | $40.00 | $40.00 | $40.00 |
| **Personal Care** | $60.00 | $60.00 | $60.00 |
| **Medical and Dental** | $60.00 | $60.00 | $60.00 |
| **Transportation** | $650.00 | $300.00 | $300.00 |
| **Entertainment** | $34.00 | $34.00 | $4.00 |
| **Charitable** | $41.00 | $41.00 | $36.00 |
| **Health Ins** | $0.00 | $0.00 | $0.00 |
| **Vehicle Ins** | $238.83 | $238.38 | $238.38 |
| | --------- | -------- | ------- |
| **Total** | **$1,896.83** | **$1,896.38** | **$1,861.38** |

Other than transportation the changes are minor and are in categories were reasonable "tweaks" can be made as part of a tight budget. However, Debtor offers no explanation for stating under penalty of perjury that her transportation expense was $650.00 and then it is reduced by $350.00. The court is confident that Debtor reviewed the Schedules before signing them under penalty of perjury. While the Debtor may have missed one scrivener's error, making two such substantial changes without explanation is not appropriate.

The court is concerned that the Debtor is not a active, fiduciary to the estate participant in this case, but merely "along for the ride," possibly doing the bidding of non-debtor third parties to advance their interests, not hers.

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. 14-27015-E-13 MARY BURKE**
**DPC-2 Peter Macaluso**

**CONTINUED MOTION TO DISMISS CASE**
**9-17-14 [27]**

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

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

**Below is the court's tentative ruling.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The court's decision is to grant the Motion to Dismiss and dismiss the case.**

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. Dckt. 27. The Trustee seeks to dismiss this case on the basis that:

1. Mary Burke ("Debtor") is $1,870.00 delinquent in plan payments. The next scheduled payment of $1,870.00 is due on September 25, 2014. The Debtor has paid $0.00 into the plan to date.

2. Debtor has failed to file an amended plan and set it for confirmation since the Trustee's Objection to Confirmation was sustained by the court on September 9, 2014. Dckt. 26.

**DEBTOR'S OPPOSITION**

Debtor has filed an opposition to this Motion on September 30, 2014. Dckt. 34. Debtor states that she will file, set and serve an amended plan prior to the hearing on this motion. Debtor also states that Debtor will be current on plan payments.

**OCTOBER 15, 2014 HEARING**

The court continued this Motion to be heard concurrently with the Debtor's Motion to Modify Plan.

**DISCUSSION**

The Trustee seeks alleges that the Debtor is $1,870.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor's assurance that the plan will be current by the hearing date is not enough to cure this delay.

While the Debtor has filed a Motion to Confirm Amended Plan, the Motion was denied by this court for failure to address the Trustee's concerns on incorrect Schedule J expenses which prevents the court from determining the feasibility of the plan. Without a confirmed amended plan, the Trustee's basis for dismissal for a lack of a confirmed amended plan is well-taken and is further grounds for the granting of the instant Motion.

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

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

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

**8. 12-37521-E-13 BENJAMIN/IMELDA CASTRO MOTION TO SELL**
**HLG-4 Kristy Hernandez 11-4-14 [51]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 4, 2014. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 Sell Property is granted.**

The Bankruptcy Code permits the Chapter 13 Debtors Benjamin and Imelda Castro ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 1225 Depot Street Unit A & B, Woodland, CA 95776

The proposed purchaser of the Property is Timothy P. Snow ("Buyer") and the terms of the sale are: a purchase price of $205,000.00 (All Cash), all creditors holding liens on the property will be paid in full according to the short sale approval before or simultaneously with the transfer of title to

Buyer. All costs of sale will be paid fully from proceeds of the sale.

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Chapter 13 Trustee filed a statement of non-opposition on November 5, 2014, as well.

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 Sell Property filed by Benjamin and Imelda Castro the Chapter 13 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 Benjamin and Imelda Castro, the Chapter 13 Debtor/Debtor in Possession, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Timothy P. Snow or nominee ("Buyer"), the Property commonly known as [Street Address, California/description of personal property]("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $205,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 53, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 4. The Chapter 13 Debtors be, and hereby are, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 6. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtors. Within fourteen (14) days of the close of escrow the Chapter 13 Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**9. 14-29226-E-13 MERLYN DIZON**
**AFL-1 Ashley R. Amerio**

**MOTION TO VALUE COLLATERAL OF FRED MEYER JEWELERS**
**10-28-14 [21]**

**Tentative Ruling:** 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). The Defaults of the non-responding parties are entered by the court.

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 Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Fred Meyer Jewelers ("Creditor") is denied without prejudice.**

The Motion filed by Merlyn Dizon ("Debtor") to value the secured claim of Fred Meyer Jewelers ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a Movado Watch ("Asset"). The Debtor seeks to value the Asset at a replacement value of $150.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Purchase Money Security Interest on the Asset secures a purchase-money loan incurred in February 13, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of

approximately $1,521.77.

**DISCUSSION**

The Debtor's attorney states in the Motion to Value (Dckt. 21) that Schedule B shows Debtor's interest in Asset at a value of $150.00. However, upon inspection of the exhibits provided by the Debtor nowhere on Schedule B is the Movado Watch listed. The only items listed under section 7 is Costume Jewelry for $50.00 and a Ring for $100.00. (Dckt. 24, Pg. 2). The Asset is not mentioned in any other category and the only place where the watch is mentioned is on Schedule D where Debtor claims a value of $150.00 for the Claim held by Fred Meyer Jewelers. (Dckt. 24, Pg. 5).

Additionally, the court does not know what "Movado Watch" it is being asked to value. A review of the Movado Watch website indicates that the "Movado Collectors" includes 28 such "collections." http://www.movado.com/movado-collections.html. The court has no idea whether it is valuing a watch from the Derek Jeter Captain Series, the Fiero Collection, the Classic Collection, or one of the other 25 collections.

While the Debtor is entitled to proffer his or her opinion of value, it is often the most ephemeral of evidence. The Debtor neglects to provide testimony as to when the watch was purchased, the purchase price, and the condition of the watch. The Debtor offers no testimony as to what he has done to try and determine the value of a watch from one of the "Movado Collections." Rather, the Debtor merely tells the court that this is the value, I have made the finding of fact as to the value, and now it is time for the court to rubber stamp my finding of fact for this unidentified (and not listed on the Schedules) watch. The function of witnesses, evidence, and the court making the necessary findings of fact do not work that way. Fed. R. Evid. 602, 701. The court has no idea, and has not been presented with sufficient evidence, to determine the retail merchant value (the replacement value) as required to make an 11 U.S.C. § 506(a) secured claim valuation.

The asset the Debtor seeks to exempt is not listed (or at least clearly disclosed) on Schedule B. Slipping it into Schedule D does not replace accurately, truthfully listing assets on Schedule B. (Given that the current outstanding balance for this watch, which Debtor states on Schedule D that the debt was incurred in 2009, is $1,521.77, it appears that the watch is not merely "costume jewelry.")

The asset not being disclosed on Schedule B, the claim of a creditor secured by the undisclosed asset will not be valued. Further, Debtor has provided the court with minimally credible, competent evidence for the court to make a determination of valuation.

The Motion is denied without prejudice.

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

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

Dizon, "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.

**10. 14-29226-E-13 MERLYN DIZON**
**DPC-1 Ashley Amerio**

**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
**10-22-14 [17]**

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

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

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

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

**The court's decision is to sustain the Objection.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan relies on valuing collateral. Merlyn Dizon's

("Debtor") Plan relies on a Motion to Value Collateral being filed for Fred Meyer Jewelers, listed in Class 2B. Debtor has not filed a Motion to Value. If a motion is not filed and granted, the creditor will be paid a monthly dividend of $7.50 on the amount of $1,521.77, which will not pay the claim in full in 60 months.

**DEBTOR'S REPLY**

Debtor filed a reply to the Trustee's Objection on November 4, 2014. Debtor states that she filed a Motion to Value the Secured Claim of Fred Meyer Jewelers on October 28, 2014. That motion is set for hearing on November 25, 2014.

**NOVEMBER 18, 2014 HEARING**

The court's review of the docket shows that Debtor filed a Motion to Value on October 28, 2014. Dckt. 21. The court decided to continue the hearing to November 25, 2014 to be heard in conjunction with the motion to value.

**DISCUSSION**

Because the court has tentatively ruled that the Motion to Value the secured claim of Fred Meyer Jewelers is denied, the Trustee's objection is well-taken. The Plan will not pay this creditor in full during the life of the plan and cannot be confirmed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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. 14-21142-E-13 LBG-3 THOMAS LISLE AND BARBARA TREAT Lucas Garcia — MOTION TO DISMISS CASE 10-10-14 [71]**

**Tentative Ruling:** The Motion to Dismiss the Bankruptcy Case 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss the Chapter 13 Bankruptcy Case is denied without prejudice.**

This Motion to Dismiss the Chapter 13 bankruptcy case of Thomas Lisle and Barbara Treat ("Debtors") has been filed by Debtors. Debtors assert that the case should be dismissed or converted based on changes in Debtors' financial and legal situation. Debtors' health concerns have made Debtors unable to maintain their ongoing plan payments. Debtors wish to dismiss their case under 11 U.S.C. § 1307(b) and evaluate their ability to sustain a plan at later date.

The Motion states with particularity the following grounds (Fed. R. Bankr. P. 9013), subject to the provisions of Federal Rule of Bankruptcy Procedure 9011, in support of the requested relief:

A. The present Bankruptcy Case was commenced on Februar4y 6, 2014.

B. The Debtors have not previously converted this case to one under Chapter 13 from a case pending under another Chapter of the Bankruptcy Code.

C. "The financial and/or legal situation of the Debtors have unexpectedly changed and the Debtors now desire to dismiss the case."

D. "Namely health concerns have made the debtors [sic.] ability to pay the ongoing payment unfeasible so the debtor [sic.] wishes to dismiss and re-evaluate their ability to sustain a plan at a later date." FN.1.

---

FN.1. As shown by subsequent information discovered by the Trustee and then, when it had been disclosed by the Trustee to the court, further verified by the Debtors (Supplemental Statement Regarding Motion to Dismiss, Dckt. 84), this "grounds" can most charitably be viewed as incomplete, and possibly more accurately as intentionally deceptive. Neither bodes well for the Debtors or Counsel.

---

E. "The Debtors have the right to dismiss this case under the provisions of 11 US Codes [sic.] 1307(b)." FN.2.

---

FN.2. As bankruptcy practitioners are aware, this right to dismiss is tempered by the requirement that such debtors must be acting in good faith and the attempted dismissal is not for improper purposes. *Rossen v. Fitzgerald (In re Rossen)*, 545 F.3d 764, 773-774 (9th Cir. 2008); *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).

---

Motion, Dckt. 71.

The Motion is not supported by any declarations, and it appears that the Debtors have intentionally, and carefully failed or refused (or where instructed by Counsel not to provide) any testimony under penalty of perjury in support of this Motion to Dismiss.

**TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response to the Motion on November 3, 2014. Dckt. 74. The Trustee states that he recently received a fax from the Law Offices of Hollingshead & Associates. Response, Dckt. 74. A copy of the fax is filed as Exhibit A with the Response. Dckt. 76. FN.3.

---

FN.3. As discussed, the fax is nothing more than a Mediation Brief filed by the defendants in the litigation disclosed on Schedule B. The court does not accept what is asserted therein, and the other exhibits, as true. Clearly, they do not meet the evidentiary requirements of Fed. R. Evid. 601, 602, and 901 et seq. However, these documents are not ignored, and as this matter is

unfolding, the adage "where there is smoke there is fire" may well apply to the present case.

---

Exhibit A is identified as a Mediation Brief for Blackstar Pavement Maintenance, Inc's, one of the defendants in the Debtors' pending state court litigation. See Original Schedule B, Dckt. 1 at 15; and Amended Schedule B, Dckt. 14 at 6. On Schedule B Debtor's state that the value of the claims in this litigation is $25,575.00. Mediation Brief." This states that Debtor Thomas Lisle alleges he was injured riding a bicycle in the Lake of the Pines community development in Nevada County and has asserted monetary damage claims against the defendants in the state court action.

Blackstar asserts in the Mediation Brief that the Debtors did not disclose the Chapter 13 bankruptcy filing (which occurred in February 2014). However, in mid-September Blackstar states that it learned of the present bankruptcy case and notified the state court.

The Mediation Brief further states that in depositions Thomas Lisle testified that his business, WTF Enterprises, Inc. had and has (prior to and after the accident) a value of $300,000.00 to $500,000.00. Blackstar then notes that in their bankruptcy Schedule B that the Debtors state under penalty of perjury that WTF Enterprises, Inc. has a value of a negative ($46,150.00).

The Blackstar Mediation Brief further notes that on Schedule B in this case Debtors' stated that the value of the claims in the state court action have a value of $25,575.00. Further, that on Schedule C the Debtors exempt the full value $25,575.00 stated value of these claims. Schedule C, Dckt. Original Schedules B and C, Dckt. 1; and Amended Schedules B and C, Dckt. 14.

Blackstar then states in its mediation brief that notwithstanding the $25,575.00 valuation stated on Schedule B and Amended Schedule B, the Debtors presented Blackstar with a California Code of Civil Procedure § 998 settlement offer of just under $1,920,000.00. Given the standing of the Chapter 13 Trustee in a bankruptcy case, the Mediation Brief discloses that a copy of the Mediation Brief is being served on the Chapter 13 Trustee. FN.4.

---

FN.4. The fact that a C.C.P. § 998 offer in excess of the value listed on a Schedule B is made does not shock the court. Bankruptcy debtors and debtors in possession have some challenges in making good faith, proper disclosures under penalty of perjury on Schedule B for such claims, and then in good faith demanding larger amounts as part of the negotiation and settlement process. However, a 7,525% difference does cause the court, "pause" concerning the prosecution of this case.

---

The Trustee also has provided the court with copies of faxes received from Sims and Ocken, Attorneys at Law. Exhibits B and C, Dckt. 76. The faxes are each letters sent by the Sims and Ocken Firm to various attorneys concerning the Debtors' state court action. The Chapter 13 Trustee is shown on the service list for each letter. The letters do not identify who Sims and Ocken are representing in that litigation. The services list identifies a Whitney A. Davis as the attorney for Debtors as the plaintiffs in the state court action. Presumably, Sims and Ocken is representing one of the defendants

in the state court action.

The first letter purports to give notice of an ex parte motion for the state court to shorten time to hear a good faith settlement determination with CHEC and Lake of the Pines. Exhibit B. The second letter purports to state that no hearing will be required, Blackstar having stipulated to such determination of the settlement between "[t]he Plaintiffs [these bankruptcy debtors] with Lake of the Pines Association, Inc. And Check Management Systems, Inc." Exhibit C. FN.5.

---

FN.5. Though the correspondence makes reference to a purported settlement by the Debtors, no settlement has been authorized by this court. See 11 U.S.C. § 363, Fed. R. Bankr. P. 9019, the Debtors exercising the powers of a trustee to control, manage, and use property of the bankruptcy estate, which includes litigation claims.

---

The Trustee also discloses to the court (as is stated in the Mediation Brief) that the Debtors are now suffering under a terrible medical condition for which there is no hope in this physical life. While not expressly stated, the court infers that the Trustee highlights this point to insure that the court appreciates the personal and family issues that these Debtors are having to address.

**DEBTORS' WITHDRAWAL**

Debtors filed their Supplemental Statement Regarding the Motion to Dismiss Case on November 14, 2014. Dckt. 84. This Supplemental Statement discloses the following (for which no declaration has been provided).

A. Since filing the Motion to Dismiss, "[a] legal circumstance unknown and unforeseen at the time of the request has arisen that merits the following response and a withdrawal of the dismissal request:"

B. "On or about September 15, 2014 Debtors [sic.] attorney was informed that debtor Thomas Lisle was diagnosed with [a medical condition for which death is imminent, redacted by the court]."

C. "The Debtors attorney because aware that a settlement was in discussion on person injury case on October 14, 2014. At that time no precise numbers were known on the exact dollar figure and no certainty existed that these settlement funds would become available." FN.6.

---

FN.6. This Response appears to be carefully worded to avoid any reference to what the Debtors and their state court action counsel were doing, the process of the litigation, but merely attempt to indicate that Debtors' Bankruptcy Counsel was "in the dark." There is no reason why Debtors' Bankruptcy Counsel should have been "in the dark." The litigation was disclosed on Schedule B and Debtors' Bankruptcy Counsel did, or should have, communicated with Debtors' state court action counsel the duties and obligations of the Debtors, as the fiduciaries of the bankruptcy estate, and the obligations of Debtors' state

court action counsel, not only for the approval of any settlement but the need of such state court action counsel to employed pursuant to an order of the court. 11 U.S.C. § 327, presuming that such state court action counsel is not providing the services *pro bono* and desires to be compensated for the services provided.

---

D. "On or about October 23, 2014 Debtors counsel was informed that a settlement had been offered and it would be sufficient to allow payment to the filed general unsecured claims." FN.7.

---

FN.7. The court again notes that Debtors' counsel uses carefully crafted language to state only that there will be sufficient monies to pay the "filed claims." In some cases the "filed claims" are not all of a debtor's obligations in that a debtor may intentionally not disclose the filing of the bankruptcy case to prevent creditors from filing claims. Counsel carefully does not state that there are monies to pay all of the Debtors' debts. The Debtors have already demonstrated that they did not provide notice of the bankruptcy case to the defendants in the state court action.

---

E. On October 28, 2014, Bankruptcy Counsel met with the Debtors to discuss modifying the plan in this case. On October 31, 2014, the Debtors signed the Modified Plan.

F. On Friday October 31, 2014, Debtors' Counsel called the Chapter 13 Trustee's Office three times, but did not receive a call back. Debtor's counsel then sent an email requesting a call back.

G. On Monday November 3, 2014, the Trustee's Office responded, but the parties have not been able to find a "mutually agreeable time" to communicate on the November 3.

H. On November 4, 2014, Counsel for Debtors was able to speak with a representative from the Chapter 13 Trustee's Office. By then the Response to the Motion to Dismiss had been filed.

**RULING**

Upon review of the docket for this case, it appears that Debtors have filed a Modified Plan and Motion to Confirm, as stated in the Debtors' supplemental statement. Because Debtors have expressed their desire to withdraw the motion to dismiss, the court could just summarily deny the Motion.

However, summarily denying the Motion could appear to give these Debtors and their Bankruptcy Counsel free reign to now do whatever else they want in the case, divert monies, and then dismiss the case. Substantial work remains to be done for these Debtors to meet the minimal requirements in properly prosecuting the case. This Motion and the Withdrawal causes the court to question whether these Debtors are up to fulfilling the fiduciary duties of a Chapter 13 debtor.

It appears that the asset listed on Schedule B as the state court

action claim has significant value in excess of $25,000.00. Debtors have disclosed that there is a "settlement" with at least some of the parties, but no settlement has been authorized by this court. Debtors state that they are represented by counsel in the state court action, but such employment has not been approved by the court. As it now sits, that state court action counsel is not authorized to receive payment for the services she is providing and is working for free.

It may well be that these Debtors were, prior to receiving the devastating personal and family medical news, incapable of prosecuting this case and fulfilling the fiduciary duties of Chapter 13 Debtors to the bankruptcy estate. Now these matters may render them incapable of prosecuting the case. The problems in this bankruptcy case are multiplying, not narrowing down.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> (c) Except as provided in subsection (f) [family farmer exception, not applicable in this case] of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause,

11 U.S.C. § 1307(c).

At this juncture it may well be in the best interests of creditors, the estate, and even the Debtors to convert this case to one under Chapter 7 and allow a bankruptcy trustee to administer the assets of the estate, including the effective prosecution of the state court action and maximize the recovery for what is stated to be a surplus bankruptcy estate.

However, in light of the family and medical issues, the court will not convert the case at this time. But counsel for the Debtors has a substantial amount of work which must be done in this case, and failure to prosecute the case will result in it being converted so that a fiduciary can be appointed to protect, prosecute, and recover the substantial value of the assets of this bankruptcy estate.

**FURTHER DISCUSSION AT NOVEMBER 23, 2014 HEARING**

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**

The court denies the Motion 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.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by Debtors, Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is denied without prejudice.

**12. 12-40945-E-13 MANSOUR/MARTHA GANJI — MOTION TO APPROVE LOAN MODIFICATION**
**PGM-4 Peter Macaluso — 10-22-14 [80]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 22, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Mansour and Martha Ganji ("Debtor") seeks court approval for Debtor to incur post-petition credit.

CitiMortgage, Inc. ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification which will increase Debtor's mortgage payment from the current $1,500.00 a month to $2,082.80 a month. The modification will fix the interest rate and monthly P&I for the life of the mortgage unless the initial modified interest rate is below current market interest rates.

The Motion is supported by the Declaration of Mansour and Martha Ganji. 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.

**DISCUSSION**

Trustee has withdrawn their objection after Debtor provided an explanation for how the Debtor will cover the increased monthly payment. Debtor states that home maintenance, recreation and personal care can be utilized while making trial loan payments and an updated plan will be filed after the trial period. (Dckt. 90).

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 Mansour and Martha Ganji 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 Mansour and Martha Ganji ("Debtor") to amend the terms of the loan with CitiMortgage, Inc., which is secured by the real property commonly known as 6149 Van Alstine Avenue, Carmichael, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 83.

**13. 11-24046-E-13 MIA KELMAN — MOTION TO INCUR DEBT**
**EAT-2 Ethan Turner — 10-27-14 [76]**

**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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 27, 2014. By the court's calculation, 29 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.**

The motion seeks permission to purchase a residence, which Mia Kelman ("Debtor") states will decrease her tax liability and asserts that the monthly payments will not exceed her current rent payments. Neither Debtor's declaration nor the motion provide information about the potential residence to be purchased or the purchase price.

The Motion states the following grounds with particularity, required by Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. The motion is made pursuant to the provisions of Local Bankruptcy Rule for the Eastern District of California 3015-1(f)(2).

B. Debtor seeks to incur debt to purchase a residence, using Debtor's 401k as the down payment.

C. Schedules I and J were filed within the prior 30 calendar days and demonstrate the Debtor's ability to pay the new debt.

D. The debt is to purchase an unidentified residence.

E. The monthly payment (on unstated terms and in an unstated amount) exceed the "the greater of the debtor's current such monthly payment." [In addition to no information being stated of such payments, the court cannot identify what the other "greater of" than the current monthly payment is reference to be by Debtor.]

In substance, the Motion is at best a direction to the court to provide para-professional or associate attorney service for Debtor. The court is directed by the Debtor to canvas other pleadings, determine what information the Debtor should assert in the Motion (and determine what information should not be asserted), assemble that for Debtor, state that in a motion for Debtor, and then rule on the court's motion for the Debtor. Such services to a Debtor at tax payer expense are not only unwarranted, they are improper for a judicial officer who does not advocate for any party appearing before him or her.

Debtor's Declaration provides some information regarding the monthly rent payments on Debtor's current apartment. Possibly there are grounds buried in Declaration which should be stated as grounds in the Motion. However, it is not for the court to so determine, draft, file, and then advocate for the Debtor.

This bankruptcy case was filed on February 18, 2011. At that time the Debtor filed under penalty of perjury Schedules I and J which purported to accurate state Debtor's income and expenses. On October 21, 2014, Debtor has filed **Amended** Schedules I and J. Dckt. 71. As **Amended** Schedules the Debtor changes the income and expense information as of the February 18, 2011 filing of this bankruptcy case. The **Amended** Schedules do not provide current income and expense information as of October 2014 – almost four years later. If current information is to be provided using the Schedule I and J Forms, the Debtor would have checked the "A **supplement** showing post-petition chapter 13 income as of the following date:[MM/DD/YYY]" box rather than the "**amended** filing" box on this form.

**FED. R. BANKR. P. 9013 MINIMAL PLEADING REQUIREMENT**

The Motion to Incur Debt 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 Debtor seeks to purchase a home to both reduce monthly payments for rent and reduce her tax liability. The Motion does not provide any information on any loan agreements or the homes Debtor is considering purchasing, although Exhibit 2 shows a preliminary cost worksheet for, presumably, a mortgage loan. Dckt. 79. This exhibit, however, has not been authenticated or introduced. This is not sufficient.

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

whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

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

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

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

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

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

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a

motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Specifically, 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). Debtor has failed to provide the necessary information for the court to rule on whether the debt to be incurred would benefit Debtor and the estate. The Motion must be denied.

**DENIAL OF MOTION WITHOUT PREJUDICE**

The court denies the Motion without prejudice. As stated above, the court fairly and evenly applies the law and rules. Attorneys do not have to guess when they "actually have to comply with the law" and when they can "cut the corner."

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.

**14. 14-28649-E-13 THOMAS/HEIDI CARTER — MOTION TO CONFIRM PLAN**
**JSO-2 Jeffrey Ogilvie — 10-8-14 [18]**

**Final Ruling: No appearance at the November 25, 2014 hearing is required.**
---
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Thomas and Heidi Carter ("Debtors") filed a Motion to Confirm First Amended Plan on October 8, 2014. Dckt. 18. The Amended Plan addresses the amended Proof of Claim filed by the Internal Revenue Service on October 1, 2014.

**TRUSTEE'S RESPONSES**

David Cusick, the Chapter 13 Trustee, originally filed an objection to the Motion to Confirm on November 5, 2014. Dckt. 31. The Trustee objected to confirmation on the basis that Debtors had failed to appear at the First Meeting of Creditors on October 9, 2014. The Meeting was continued to November 13, 2014.

On November 18, 2014, the Trustee withdrew his objection because Debtors appeared at the continued Meeting of Creditors. Dckt. 34. This resolved his objection.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee has withdrawn his opposition and no other parties

have filed objections to the Motion.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on October 8, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**15. 14-25159-E-13 TERRI MEYER** **MOTION TO CONFIRM PLAN**
**DBJ-1 Douglas Jacobs** **9-23-14 [37]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2014. By the court's calculation, 63 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 September 23, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

**16. 14-29659-E-13 JUAN ZARAGOZA-BRAVO**
**MET-1 Mary Ellen Terranella**
**MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.**
**10-26-14 [15]**

**Final Ruling: No appearance at the November 25, 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, Bank of America, N.A., parties requesting special notice, and Office of the United States Trustee on October 26, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value secured claim of Bank of America, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.**

The Motion to Value filed by Juan Zaragoza-Bravo ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 772 Meadowlark Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $235,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

**OPPOSITION**

Creditor has not filed an opposition.

**DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately $249,897.00. Creditor's second deed of trust secures a claim with a balance of approximately $91,275.00. 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 Juan Zaragoza-Bravo ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 772 Meadowlark Drive, 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 $235,000.00 and is encumbered by senior liens securing claims in the amount of $249,897.00, which exceed value of the Property which is subject to Creditor's lien.

**17. 14-29659-E-13 JUAN ZARAGOZA-BRAVO**
**MET-2 Mary Ellen Terranella**
**MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.**
**10-26-14 [20]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Wells Fargo Bank, N.A., parties requesting special notice, and Office of the United States Trustee on October 26, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against property of Juan Zaragoza-Bravo ("Debtor") commonly known as 772 Meadowlark Drive, Fairfield, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,459.07. An abstract of judgment was recorded with Solano County on December 10, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $235,000.00 as of the date of the petition. The unavoidable consensual liens total $341,172.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of $1.00 on Schedule C.

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

**ISSUANCE OF A COURT DRAFTED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Wells Fargo Bank, N.A., California Superior Court for Solano County Case No. FCM112163, recorded on December 10, 2010, Document No. 201000117510 with the Solano County Recorder, against the real property commonly known as 772 Meadowlark Drive, Fairfield, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**18. 12-41460-E-13 ROBERT/CHRISTY ALVARADO MOTION TO MODIFY PLAN**
**SJS-1 Scott Johnson 10-17-14 [22]**

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

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

**Below is the court's tentative ruling.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.**

Robert and Christy Alvarado ("Debtors") filed the Motion to Confirm their First Modified Chapter 13 Plan on October 17, 2014. Dckt. 22. Debtors seek to modify their plan because Mr. Alvarado no longer makes overtime, decreasing his income. The plan accordingly decreases Debtors' monthly plan payments and decreases the dividend to unsecured creditors from 99% to 17.23%.

**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed his objection to the Motion on November 7, 2014. Dckt. 28. The Trustee objects on the basis that:

1. The Trustee is uncertain whether Debtors intend to provide for both debts owed to the Franchise Tax Board. Under the confirmed plan, Debtors list the Franchise Tax Board with two debts in Class 5 with amounts of $4,433.00 and $8,000.00. The proposed modified plan lists the Franchise Tax Board with one debt in

the amount of $2,995.12, which matches Claim No. 17. Debtors do not list the priority debt of $4,198.45 (Claim No. 15). The plan will pay both claims as proposed.

2. Debtors stated that they have paid the Trustee a total of $38,597.00 through September 2014. Starting October 25, 2014, Debtors propose to pay monthly payments of $610.00 for the remainder of the plan. The Trustee's records show a total of $37,987.00 paid through the end of September 2014. The Trustee is not opposed if this is corrected in the order confirming the plan.

3. Debtors have stated in the Motion that Mr. Alvarado was receiving between 24 and 40 hours of overtime per pay period, but he is no longer being offered any overtime. Debtor's last filed a Schedule I on December 14, 2012, reflecting a monthly income of $6,707.20 for Mr. Alvarado. The pay stubs provided support a decline in overtime, but Debtors have not yet filed a Supplemental Schedule I or provided other competent evidence reflecting this decrease.

The Trustee then requests that the Motion be granted and the order confirming the plan to correct the monies paid through September 2014.

**DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee objected to the plan, but will not oppose confirmation if Debtors correct the amounts paid into the Plan through September 2014.

While the correction to the amount paid into the Plan through September 2014 can be corrected easily, the Debtors' modified plan does not provide for the priority unsecured claim of the Franchise Tax Board in Claim 15. This is required in 11 U.S.C. § 1322(a)(2). Without the amended plan providing for the second claim of the Franchise Tax Board, the Plan cannot be confirmed. Thus, 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.

**19. 14-29362-E-13 DPC-1 CHARLES/CLAUDIA BURNETT Peter Macaluso**

**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-29-14 [16]**

**Final Ruling: No appearance at the November 25, 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 Debtors and Debtor's Attorney on October 29, 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 Debtors having filed an Amended Plan and Motion to Confirm, there has been a *de facto* dismissal of the plan at issue. No hearing is required for the present Objection.

**The court's decision is to sustain the Objection.**

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

1. The Plan does not appear to be Charles and Claudia Burnett's ("Debtors") best effort under 11 U.S.C. § 1325(b). Debtors are over the median income and proposes plan payments of $450.00 for 60 months with a 0.06% dividend to unsecured creditors. Debtors propose to pay two 457 loans in Class 2 of the Plan listed as Fidelity Investments. However, Debtors also have a listed expense for these loans on Schedule J in the amounts of $289.29 and $27.13. This indicates that Debtors have additional income to pay to the plan.

2. The Plan does not provide all of Debtors' projected disposable income for the applicable commitment period. The Trustee is not certain that the expense on Schedule j for "457 Repayment" in the amounts of $289.29 and $27.13 are reasonably necessary for the maintenance and support of the Debtors or a dependent. Debtors have not disclosed the amount of the loans and when they will be repaid. The plan payments do not increase after the loans are repaid and Debtors have not furnished evidence to show why repayment of these loans is reasonably necessary. Debtors must disclose this as the plan payment may need to increase after the loans are repaid.

3. The Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor is proposing a 0.06% dividend to

unsecured creditors, which totals $133.75. Debtors have supplied insufficient information relating to the real properly at 7511 Wisconsin Drive, Citrus Heights, California to assist the Trustee in determining the value of the property. Debtors fail to report square footage, number of bedrooms and bathrooms, size of the lot, and when the home was built. According to the Sacramento County website, Debtors purchased the property on March 4, 2008. Debtors list the value at $200,000.00 on Schedule A. The only debt listed on Schedule D is Wells Fargo, described as a first deed of trust with a claim amount of $212,781.95. The Trustee is unable to confirm what the appropriate estimated value of the property is.

**DEBTORS' REPLY**

Debtors filed a reply on November 10, 2014. Dckt. 21. Debtors state that they will file an amended plan, which will address the Trustee's concerns before the hearing date. Because Debtors are proposing this new plan, they request that the Objection be sustained.

A review of the docket shows that Debtors have filed an amended plan and a related Motion to Confirm on November 12, 2014.

**DISCUSSION**

The Trustee's objections are well-taken. Debtors' failure to disclose necessary information about their 457 loan repayment and the value of their home suggests that the subject plan is not Debtors' best effort. 11 U.S.C. § 1325(b).

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

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

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

**20. 14-29065-E-13 ISAIAH MARSH** **MOTION TO CONFIRM PLAN**
**DEF-1 David Foyil** **10-13-14 [20]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.
---

The case having previously been dismissed on November 18, 2014 (Dckt. 61), the Motion is denied without prejudice as moot.

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 Plan 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 Motion is denied without prejudice as moot, the case having been dismissed.

**21. 13-34373-E-13 RUSSELL/TINA CALDWELL MOTION TO MODIFY PLAN**
**LBG-5 Lucas Garcia 10-8-14 [69]**

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

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

**Below is the court's tentative ruling.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

Russell and Tina Caldwell ("Debtors") filed the Motion to Confirm First Modified Plan on October 8, 2014. Dckt. 69. Debtors seek to modify their plan because Debtors owe 2011 taxes to the Internal Revenue Service, which were not known at the time of filing.

**TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response to the Motion on November 7, 2014. Dckt. 77. The Trustee points out that:

1. Debtors filed the First Amended Plan as an Exhibit to their Motion on October 8, 2014. It appears identical to a plan originally filed separately as Docket Number 62, which was denied confirmation for failure to serve the Internal Revenue Service properly. Since the plan is not clearly filed as a stand alone document since the plan was previously denied and

the Motion does not refer to seeking to confirm the previously denied plan. The existence of the plan is not clearly noticeable in the docket.

2. The reason for the modified plan appears to be a tax debt to the Internal Revenue Service that Debtor's attorney filed one claim for and then amended. Claim No. 10. Where the Notice of filed Claims was filed and served June 26, 2014 and the first claim was filed August 8, 2014, the Trustee does not oppose the claims.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee has indicated that Debtors have filed the modified plan separately and not mentioned this in their Motion or supporting pleadings. Although this oversight is unfortunate and causes the Trustee, court, and creditors to search for the subject plan, it is not grounds to deny confirmation.

The prior Motion to Confirm (Dckt. 58) was denied on October 7, 2014 (Civil Minutes and Order, Dckts. 74, 76) for failure of the Debtor to properly serve and notice the Internal Revenue Service. The denial was without prejudice. See Order, Dckt. 76. Being without prejudice, Debtors may seek confirmation of that same plan.

The Motion clearly states that the proposed Modified Plan to be confirmed is provided as Exhibit 1 to Creditors. Motion, Dckt. 69; Exhibit 1, Dckt. 72. The First Modified Plan filed and served as Exhibit 1 is the same First Modified Plan filed on August 20, 2014, as Docket Entry 62.

Though it was necessary and proper for the Trustee to raise this issue to insure that there is a clear record and no confusion as to the plan confirmed, it is not necessary to deny confirmation. Counsel for the Debtors has insured that all creditors considering the First Modified Plan have been served with a copy thereof. Creditors could, and presumably have, made their informed decision not to oppose confirmation.

The Opposition is overruled, with the court expressly identifying the First Modified Plan by its filing date in the order granting the Motion.

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 August 20, 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.

**22. 14-25376-E-13 KEVIN/BREE SEARS — MOTION TO CONFIRM PLAN**
**DBJ-2 Douglas Jacobs — 9-23-14 [72]**

**Final Ruling: No appearance at the November 25, 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 September 23, 2014. By the court's calculation, 63 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 without prejudice as moot, having previously been converted to a Chapter 7.**

Kevin and Bree Sears ("Debtors") filed the Motion to Amend Plan on September 23, 2014. Dckt. 72. Debtors seek to amend their plan to list the correct amount of arrears on their residence. Debtors were unaware of this amount when the original plan was filed.

**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed his objections to the Motion on October 29, 2014. Dckt. 91. The Trustee objects to confirmation on the basis that:

1. To date, the Trustee has not received profit and loss statements requested in the Objection to Confirmation (Docket Control Number DPC-1). The Trustee is not certain if Debtors will make the payments and comply with the plan, or if the plan is Debtors' best efforts without this information. The Trustee received six (6) months of bank statements for the following accounts: Wells Fargo No. 9335, Wells Fargo No. 5975, and Wells Fargo No. 4356. The Trustee still has not received bank statement for Bank of America No. 4234 or U.S. Bank No. 8986.

2. The court entered an order for the Trustee not to disburse funds until the final hearing on motions to dismiss this case on November 18, 2014. The court's order must be modified to allow distribution either upon confirmation, dismissal, or conversion of this case.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. However, this case was voluntarily converted to a Chapter 7 on November 17, 2014. Therefore, the Motion is denied without prejudice as moot.

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 case having been previously converted to a Chapter 7, the Motion to Confirm the Plan is denied without prejudice as moot.

**23. 14-30077-E-13 KENNETH/SHARON MELIKIAN**
**EJS-1 Eric Schwab**

**MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING**
**10-21-14 [9]**

**Tentative Ruling:** 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). The Defaults of the non-responding parties are entered by the court.

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. Debtors and Debtors' Attorney failed to file a Proof of Service with the Motion and supporting pleadings. The Motion was filed with the court on October 21, 2014. 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value secured claim of Green Tree Servicing ("Creditor") is denied without prejudice.**

The Motion to Value filed by Kenneth and Sharon Melikian ("Debtors") to value the secured claim of Green Tree Servicing ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 4186 Windsor Point Place, El Dorado Hills, California ("Property"). Debtors seek to value the Property at a fair market value of $710,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

**NO PROOF OF SERVICE**

Debtors and their Counsel have failed to file a proof of service for this Motion with the court. The court, then, has no way of knowing which parties were served with notice or when they were served. The court cannot issue a ruling on a contested matter such as this when there is no evidence that the necessary parties whose rights may be affected, especially Creditor, have been afforded notice of this Motion. The Motion must be denied for failure to properly notice and serve necessary parties.

**UNIDENTIFIABLE CREDITOR NAMED IN MOTION**

Additionally, the court has no idea whether "Green Tree Servicing" is actually a creditor, as defined in 11 U.S.C. § 101(10) and (5), an authorized agent for the creditor, or merely entering into agreements which are unenforceable against the undisclosed creditor as part of a scheme to defraud consumers and the court. Green Tree has not filed a Proof of Claim in this case, nor has it filed any supplementary documentation showing that it is, indeed, the creditor.

The court must deny the motion on this ground. This will allow the Debtors' counsel and "Green Tree Servicing" to correct or supplement the documentation so the court can have a good faith belief that it is approving and authorizing a transaction between the real parties in interest who have a case or controversy before this federal court. U.S. Constitution Article III, Section 2.

Therefore, because no proof of service has been filed with the instant Motion for the court to determine if proper service has been given and because the court cannot determine if Green Tree Servicing is, in fact, the creditor holding the note rather than just the servicer of the loan, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kenneth and Sharon Melikian ("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 denied without prejudice.

**24. 12-38294-E-13 DMR-3 | DAMON/DEBRA DWORAK, Dana Rueckert | MOTION TO MODIFY PLAN 10-15-14 [51]**

**Final Ruling:** No appearance at the November 25, 2014 hearing is required.

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

**The Motion to Confirm the Modified Plan is granted.**

Damon and Debra Dworak ("Debtors") filed the Motion to Modify Plan on October 15, 2014. Dckt. 51. Debtors state that they seek to modify their plan because they are behind on plan payments due to unexpected expenses, like vet bills, a mortgage payment increase, dental, and other medical bills.

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 October 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.

**25. 14-30584-E-13 MARCOS LOPEZ**
**CAH-1 C. Anthony Hughes**

**MOTION TO IMPOSE AUTOMATIC STAY**
**O.S.T.**
**11-17-14 [22]**

**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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Default Resolution Network, Severaid and Glain, PC, USDA Rural Development, and Office of the United States Trustee on November 17, 2014. By the court's calculation, 8 days' notice was provided.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Impose the Automatic Stay is granted.**

Marcos Lopez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year. The Debtor's first bankruptcy case (No. 14-24249) was dismissed on May 13, 2014, after Debtor failed to timely file documents. Debtors' second bankruptcy case (No. 14-25249) was dismissed on June 6, 2014, after Debtor again failed to timely file documents. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay did not go into effect upon the filing of the instant petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor attempted to complete the prior cases in *pro se*. Debtor has retained counsel in the instant case and has filed the necessary documents to avoid dismissal at this point in the case. Debtor has already broken his previous pattern of failing to file necessary documents with his petition, evidencing his good faith in filing the instant case.

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 impose 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 imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.