UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 21, 2014 at 10:00 a.m.

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1. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO CONFIRM AMENDED PLAN 11-6-13 [88]

Tentative Ruling: The motion will be denied.

The debtors ask that the court confirm their chapter 11 plan, filed on November 6, 2013.

Deutsche Bank National Trust Company, as the first mortgage holder on the debtors' residence on Wells Lane, opposes confirmation contending that the November 6 plan "purports to value the collateral and fails to provide for on-going taxes and insurance." And, the plan is not clear about "post-petition arrears and advances." Docket 94.

The motion will be denied for several reasons.

First, the plan must clarify the treatment of Deutsche Bank National Trust Company's claim, by providing for post-petition, pre-confirmation and post-confirmation arrears, by clearly stating whether any aspect of the loan is being modified, and by clearly stating DB's remedies in the event of post-confirmation default.

Second, the plan does not fix the problems the court identified in its November 25, 2013 ruling on the approval of the disclosure statement.

For instance, the plan does not say who will be responsible for paying the taxes and insurance on the debtors' real properties. The debtors must make certain that their plan tracks the terms of their last-amended disclosure statement. When the debtors filed their last-amended and approved disclosure statement on December 11, 2013, correcting the deficiencies identified by the court on November 25, 2013, the debtors neglected to file an amended plan, correcting those same deficiencies. See Docket 99.

In addition, Select Portfolio, the mortgage holder on the Catherine Court property, has made an 11 U.S.C. § 1111(b) election. Docket 36. The plan says that SP's loan will be modified but does not say whether SP has agreed to the modification, to clarify the relevance of the 1111(b) election. This appears to have been a last-minute change in the terms of the plan.

There is still no set amount of the general unsecured claims in the plan. How can the court or anyone else assess plan feasibility when the debtors are proposing to pay a 13% dividend to general unsecured creditors over a 60-month period, without knowing the aggregate amount of general unsecured claims?

The court's posted November 25 ruling on the approval of the disclosure statement follows below:

Tentative Ruling: The motion will be denied.

The debtors ask the court to approve their disclosure statement. Docket 89. The court is still considering the objection of the U.S. Trustee and creditors U.S. Bank/Select Portfolio Servicing (secured by sole deed on Catherine St. property), Deutsche Bank National Trust Company (secured by first deed on Wells Lane property) and Donald Suetta (secured by second deed on Wells Lane property), to the prior version of the disclosure statement.

The motion will be denied for the following reasons:

(1) As pointed out by U.S. Bank/Select Portfolio Servicing in its opposition to the prior version of the disclosure statement, the disclosure statement values its Catherine Court property collateral at $450,000 but does not state whether and when the debtors will file and prosecute valuation motions.

This is not corrected in the latest version of the disclosure statement. Docket 89 at 7-8. The debtors state that they will be filing valuation motions only as to the Wells Lane property. Docket 89 at 7.

(2) The disclosure statement does not say who will be responsible for paying the taxes for the debtors' real properties. It mentions only that the mortgage payments "do not include insurance." Docket 89 at 7, 8.

(3) The latest version of the disclosure statement does not say how the plan will treat claims for which the holder has made an election under 11 U.S.C. § 1111(b). See, e.g., Docket 36.

(4) The disclosure statement fails to indicate which secured claims, if any, have post-petition and pre-confirmation arrears and how such arrears will be cured.

(5) The disclosure statement does not say why the debtors are projecting an increase in the income from their flooring business. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(6) The disclosure statement does not explain why it is burdensome, inconvenient, reasonable and necessary for there to be a separate convenience class of unsecured claims, when such class appears to consist of only two credit card claims, held by the same creditor, Capitol One, for $1,195 and $1,335. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(7) The disclosure statement is not clear about the claims in the convenience unsecured class. On page 6, it mentions the amount of such claims as of the petition date ($3,452 - representing two claims), while on page 8 it mentions a different amount that will be paid ($4,253 - representing three claims). Yet, besides the Capitol One claims, the court sees no other proofs of claim for less than $2,000. These apparent discrepancies should be clarified. The issues with the convenience class claims were raised by the U.S. Trustee as an objection to the prior version of the disclosure statement.

(8) The disclosure statement does not say what will be the exact aggregate amount of general unsecured claims. As a result, there is no information or reliable and adequate information provided to general unsecured creditors about the dividend they should expect from the plan. How can general unsecured creditors then decide whether to vote for or against the plan?

The disclosure statement says only that "The total general unsecured debt listed by Debtor as of the date of filing was approximately $132,995. This total will increase by at least $200,000 if the Debtors valuation of the collateral of Class 4 and 5 are successful. Payments on these debts will total approximately $900-950 per month." Docket 89 at 6.

The issues with the aggregate amount of general unsecured claims were raised by the U.S. Trustee as an objection to the prior version of the disclosure statement.

(9) The disclosure statement is not clear about what will happen to income that is used to pay claims only for a portion of the plan term. For instance, the monthly income devoted to the payment of priority claims is projected to pay off such claims during the first two years of the five-year plan. What will happen to that income subsequently? Will it be used to pay general unsecured claims? This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(10) The mortgage payments on the debtors' residence to Deutsche Bank National Trust Company are due to increase by $500 and $530 on January 1, 2015 and January 1, 2016. The disclosure statement does not address how the debtors will meet these obligation increases. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

Future amendments of the disclosure statement should be accompanied with red/black-lined versions.

The court will not address objections pertaining to plan confirmation. Such objections will be addressed if and when the debtors reach plan confirmation.

2. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO VALUE COLLATERAL
CLH-6
VS. DONALD AND IDA SUETTA — 12-23-13 [105]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtors move for an order valuing their residence on Wells Lane in Vacaville, California at $800,000 in an effort to strip off Donald and Ida Suetta's $200,000 second mortgage on the property and treat it as a wholly

unsecured claim.

The respondent Donald Suetta has filed a non-opposition to the motion.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence. It provides that "a plan may- modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence."

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is a secured claim only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim."

"[The value of the collateral] 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."

A debtor's opinion of value in the schedules is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Based on their opinion, the debtors contend that the property has a value of $800,000. Docket 107, Carla Eaton Decl. ¶ 6; see also Schedule A (stating that the value of the property is $750,000). The property is subject to two deeds of trust, the first deed in favor of Bank of America, securing a claim for approximately $964,984 and the second deed in favor of Donald and Ida Suetta, securing a claim of $200,000.

The court has received no evidence refuting the debtors' valuation of the property.

11 U.S.C. § 1123(b)(5)'s anti-modification provision applies only to secured claims. This means that a wholly unsecured claim on the debtors' primary residence may be avoided. Stated differently, the anti-modification clause of section 1123(b)(5) does not apply to secured creditors holding completely unsecured claims, even if they are secured by the debtor's primary residence. See Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1227 (9th Cir. 2002); see also Lam v. Investors Thrift (In re Lam), 211 B.R. 36, 40-41 (B.A.P. 9th Cir. 1997).

Donald and Ida Suetta's second priority claim against the property is wholly unsecured within the meaning of 11 U.S.C. § 506(a)(1) because the estate has no equity in the property, after the deduction of Bank of America's first mortgage. Hence, Donald and Ida Suetta's second mortgage will be stripped off, making it an unsecured claim. The motion will be granted only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It

is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

3. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO CONVERT OR DISMISS CASE 5-30-13 [40]
UST-1

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The hearing on this motion was continued from November 25, 2013. Secured creditor Deutsche Bank National Trust Company, holding the first mortgage on the Wells Lane property, filed an memorandum in support of the U.S. Trustee's motion to convert or dismiss the case on January 7, 2014.

The ruling from November 25, 2013 follows below.

The U.S. Trustee moves for conversion to chapter 7 or dismissal, pursuant to 11 U.S.C. § 1112(b), arguing that the debtors have not filed their operating reports for February, March, and April of 2013, and that they have not filed Form 26 for their Floors to Go Sofa and Loveseats, Inc., business, as required by Fed. R. Bankr. P. 2015.3.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." 11 U.S.C. § 1112(b)(4)(F).

After this motion was filed, the debtors filed the missing operating reports. Dockets 45, 46, 47. The debtors have represented that they will be filing Form 26 "shortly." Docket 58 ¶ 9. The debtors have given no reason for their failure to file timely the reports and form. Mrs. Eaton says that she prepared the reports and "[b]efore the 15th of each month [she] forwarded the report[s] to [her] attorney for review and filing." But, "[a]pparently, the complete reports were not filed by my attorney after [she] forwarded them to her." Docket 58 ¶¶ 6, 7. Beyond this, the debtors do not explain their failure to file the reports timely.

As to Form 26, the debtors say that the corporation's CPA was required to prepare it, "but the documents required were not completed until recently." Docket 58 ¶ 9.

None of the foregoing rises to the level of explanation about why the debtors

did not file timely the operating reports and Form 26. The debtors cannot blame their attorney or the corporation's accountant for their defaults. After all, both their personal attorney and the corporation are subject to their direct control. They are liable for the actions or lack of action by their professionals. The court cannot excuse the late filing of the operating reports and the still outstanding Form 26.

The above defaults by the debtors then are cause for conversion or dismissal under 11 U.S.C. § 1112(b)(1).

Conversion to chapter 7 would be in the best interest of the creditors and the estate because the debtors have substantial nonexempt and unencumbered assets that could be administered for the benefit of creditors. Some of the debtors' nonexempt and unencumbered assets include: a backhoe with a scheduled value of $4,000, tractor with a scheduled value of $2,000, $16,550 of nonexempt equity in the debtors' Floors to Go Sofa and Loveseats Inc. business, 1994 Chevy Suburban with a scheduled value of $1,000, 2004 Ford Econoline with a scheduled value of $3,000, $1,475 of nonexempt equity in a 2005 Toyota Tacoma, 1984 Star craft pontoon outboard with a scheduled value of $1,500, 1994 Mastercraft 19' with a scheduled value of $4,000, "Funds seized by sheriff" with a scheduled value of $12,500, and a franchise with Floors to Go with a scheduled value of unknown. The motion will be granted. The case will be converted to chapter 7.

4. 13-30417-A-13 PATRICK FAGUNDES
13-2261
FAGUNDES V. JPMORGAN CHASE ET AL

MOTION TO
REVIEW REQUEST FOR ENTRY OF DEFAULT
12-30-13 [71]

Final Ruling: The motion has not been served on the defendants. The court previously ruled that it was appropriate to dismiss the claims against JPMorgan. The other defendant, Jesbir Brar has moved to dismiss the claims against him. The hearing on his motion will be on February 18 at 10:00 a.m. The court continues the hearing on this motion to the same date and time. The plaintiff is to give notice to both defendants and their counsel of the continuance and this motion no later than January 27 and file a proof of service no later than January 30.

5. 13-32417-A-11 BALBIR/SAWARNJIT SEKHON
MRL-3

MOTION TO
APPROVE DISCLOSURE STATEMENT
11-24-13 [82]

Tentative Ruling: The motion will be granted and the disclosure statement will be approved, subject to the debtors making the changes below.

The debtors ask for approval of their disclosure statement.

Oceanic Redding, LP opposes approval of the disclosure statement.

The disclosure statement will be approved, subject to the debtors making the changes:

(1) The statement does not adequately discuss the debtors' pre-petition financial history, especially covering how the debtors spent income from the operation of the hotel during the period when the mortgage, property taxes and franchise royalties/charges were not being paid. While the court recalls that the debtors have discussed in open court some of the pre-petition financial challenges they have faced, such discussion should be included in the

disclosure statement.

While the debtors do not have to provide a thorough accounting of how they spent pre-petition operational income during the times they did not pay the mortgage, property taxes and franchise royalties/charges, the disclosure statement should provide explanation of how much pre-petition income the debtors had available monthly, how that income was spent, and what were the financial challenges the debtors were facing.

(2) The statement does not adequately disclose the circumstances surrounding the loss of their hotel franchise agreement. The debtors should disclose all reason(s) for the loss of the franchise, including, but not limited to, the non-payment of franchise royalties/charges.

(3) As income from the debtors' son will be used to fund the plan, the disclosure statement must disclose the son's financial condition and disclose how would he be able to make the labor and financial contributions to make the plan work.

The disclosure statement should also attach a declaration signed under the penalty of perjury by the son about the above disclosures.

(4) The court will not require the debtors to explain why they dismissed their valuation motion as to the hotel property. But, the debtors should mention in the major events section of the disclosure statement (page 9) the cash collateral and stay relief motions.

(5) Although the court will not require that the debtors provide budget projections for the entire 15-year proposed term of payment on the claim held by Oceanic, the disclosure statement should disclose the assumptions that have been made in preparing the projected 1 to 5-year budget, including whether the debtors have taken into consideration cash reserves for maintenance and unanticipated expenses, seasonality issues, and other peculiarities unique to the running of the hotel.

The debtors should also disclose the individual who prepared the budget.

(6) The disclosure statement and plan should address some inconsistencies with respect to the class 2c claim. The claim (for approximately $105,876 held by Bank of America) is listed in the disclosure statement as being secured by the debtors' vacant lot of land in Shasta, California. The disclosure statement should explain why the claim is not listed in Schedule D and, if the debtors will surrender the land - as stated by the debtors- why is the statement referring to circumstances "In the event of a default," (page 18). Both the disclosure statement and plan should be amended to resolve these inconsistencies.

(7) If the asterisk on page 19 is a typo, it should be corrected.

(8) The disclosure statement should address the absolute priority rule and specifically whether payment of general unsecured creditors without interest satisfies the rule.

(9) The disclosure statement should elaborate on the pre-petition reduced maintenance and reduced improvements on the hotel property, mentioned on page 6.

(10) The disclosure statement should explain the loss of $3,570 for November 2013.

(11) The disclosure statement should address both the apparent omissions and inconsistencies between the hotel's 2010 statement of profit and loss and the budget attached to the plan, identified by Oceanic on pages 11 and 12 of its objection to disclosure statement (Docket 99).

The court will take up plan confirmation issues at the plan confirmation hearing. The court will not pre-judge whether the plan is confirmable.

As to the remaining disclosure statement issues:

Oceanic's contention that the unsecured portion of its claim ($1.2 million) should be included among the class 4 claims appears to be in error. Class 4 are equity holders while class 3 are general unsecured creditors.

To the extent Oceanic was referring to the class 3 claims, the debtors do not have to include the unsecured portion of Oceanic's claim among the general unsecured claims, if the debtors are no longer planning to strip down Oceanic's claim.

Oceanic's comment about the debtors disclosing under the plan feasibility analysis how they will pay administrative claims and post-petition property taxes when all funds are Oceanic's cash collateral is misplaced. After plan confirmation, cash collateral is no longer an issue. The terms of the plan take over.

Future versions of the plan and disclosure statement should be accompanied by a red/black-lined version of such documents.

Finally, if anyone in this case files with the court a paper that is longer than 10 pages in length, the paper should contain a table of contents, unless ordered otherwise.

6. 13-32417-A-11 BALBIR/SAWARNJIT SEKHON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RPG-2 — 12-24-13 [94]
OCEANIC REDDING, LP VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, Oceanic Redding, LP, seeks relief from the automatic stay as to a hotel real property in Redding, California. This is the second stay relief motion filed by the movant, less than one month after the court denied the prior motion on November 27, 2013. Dockets 86 & 89. The legal bases for the motion is 11 U.S.C. § 362(d)(1) and (d)(2).

To the extent the movant is attempting to relitigate some of the issues the court rejected in connection with the prior state relief motion or the cash collateral motion, the court will not allow those arguments once again. For instance, the court has set an amount for, and ordered the payment of, adequate protection. The court will not permit relitigation of the adequacy of the set adequate protection payments.

In addition, the court will not allow relitigation of whether and to what extent the debtors' proposed monthly budget is reasonable. This has been litigated and the court has ruled on this already, when it disposed of the cash

collateral motion. Dockets 73 & 79. That motion was granted for a 120-day period.

The movant's other contentions include: non-payment by the debtors of ordered monthly adequate protection payments in the amount of approximately $6,000; nonpayment of property taxes; payment of $16,000 in compensation to Debtor Balbir Sekhon on November 14, 2013.

The movant complaints that it has received only two adequate protection payments from the debtors. That is precisely the number of payments the movant should have received as of the time this motion was filed. The November 15, 2013 interim order approving use of cash collateral for 120 days directed that the payments be made on the 30th of the month, starting on October 30. Docket 79 ¶ 1. This motion was filed on December 24, 2013, meaning that the debtors should have made only two adequate protection payments to the movant, on October 30 and November 30. The December 30 payment was not due and payable when this motion was filed on December 24.

Raising the non-payment of property taxes as an issue is not helpful either. The movant complains that the debtors have not paid the "post-petition" December 2013 tax bill. But, the debtors cannot pay pre-petition claims outside of a confirmed plan or court order. The movant ignores the fact that the December 2013 tax bill covers a pre-petition period, namely, the tax year of July 1, 2013 through June 30, 2014. This case was filed on September 23, 2013.

The debtors have also explained the transfer of the $16,000. That transfer was not to an insider but it was transfer of funds from U.S. Bank to Chase Bank, when the debtors changed their operating account.

Finally, the movant complains that the debtors' financial performance is not where it should be for them to reorganize. The movant cites the November 2013 operating report and once again revisits issues pertaining to the debtors' budget.

The movant ignores this court's November 15, 2013 order permitting use of cash collateral for 120 days. Docket 79. The movant also ignores the fact that the debtors are moving forward with their plan and disclosure statement. The hearing on the approval of the disclosure statement is on the instant calendar. The court will not prejudge plan confirmation issues when it is obvious that the adjudication of such issues is quite near, within the next two to three months. The motion will be denied.

The court reminds counsel for the movant that the Local Bankruptcy Rules require that a *separate* proof of service be filed with all motions / pleadings. See Local Bankruptcy Rule 9014-1(e)(3).

7. 13-25330-A-12 PAUL MENNICK — MOTION TO DISMISS CASE 12-23-13 [25]

Final Ruling: The motion will be denied without prejudice.

The motion is not supported by any evidence, such as a request for judicial notice, a declaration, or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual

allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Further, the motion is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(2). And, while the court did find a certificate of service appended to one of the motion papers, it does not demonstrate that notice of the motion and the hearing was given to all parties in interest as required by Fed. R. Bankr. P. 2002(b)(4).

Finally, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion papers do not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

8.	13-34541-A-11 CAH-2	6056 SYCAMORE TERRACE LLC	MOTION TO EMPLOY 12-6-13 [12]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from January 6, 2014. The movant has filed supplemental papers. An amended ruling from January 6 follows below.

The debtor requests approval to employ C. Anthony Hughes as counsel for the debtor's estate, effective November 14, 2013. The proposed attorney will assist the debtor in the administration and prosecution of this case.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. Mr. Hughes is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

9.	13-34541-A-11 CAH-4 VS. JP MORGAN CHASE BANK, N.A.	6056 SYCAMORE TERRACE L.L.C.	MOTION TO VALUE COLLATERAL 12-16-13 [20]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $1,600,000 in an effort to strip down JPMorgan Chase Bank's first mortgage on the property and treat it as a partially unsecured claim. The property is not the debtor's residence.

JPMorgan Chase Bank opposes the motion, submitting its own valuation of the property - supported by an appraisal - at $2,250,000. Dockets 56 & 54.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim."

"[The value of the collateral] 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."

A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor contends that the property has a value of $1,600,000. Docket 22; Schedule A. The property is subject to:

- a first mortgage in favor of JPMorgan Chase Bank for approximately $2,231,587,
- a second mortgage in favor of IndyMac Mortgage Services for approximately $250,000, and
- a third mortgage in favor of Jahan and Faran Honardoost for approximately $200,000.

The court is not persuaded that the property has a value of $1,600,000.

The debtor's valuation is based solely on the debtor's opinion of value. Docket 22. On the other hand, JPMorgan Chase Bank has produced an appraisal dated December 12, 2013, valuing the property at $2,250,000. Dockets 56 & 54. The appraisal is supported by a declaration and it contains expert testimony. The apprisal contains an extensive comparables analysis of the property. Docket 54. The court adopts JPMorgan Chase Bank's valuation of the property.

Accordingly, the motion will be denied.

10.	13-34541-A-11	6056 SYCAMORE TERRACE	MOTION TO
	CAH-5	L.L.C.	VALUE COLLATERAL
	VS. INDYMAC MORTGAGE SERVICES		12-16-13 [25]

Tentative Ruling: The motion will be denied in accordance with the ruling on the debtor's related motion to strip down JPMorgan Chase Bank's first mortgage on the property.

In this motion, the debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $1,600,000 in an effort to strip off IndyMac Mortgage Services' $250,000 second mortgage on the property and treat it as a wholly unsecured claim.

11. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C.
CAH-6
VS. JAHAN AND FARAN HONARDOOST

MOTION TO VALUE COLLATERAL
12-16-13 [29]

Tentative Ruling: The motion will be denied in accordance with the ruling on the debtor's related motion to strip down JPMorgan Chase Bank's first mortgage on the property.

In this motion, the debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $1,600,000 in an effort to strip off Jahan and Faran Honardoost's $200,000 third mortgage on the property and treat it as a wholly unsecured claim.

12. 12-38246-A-7 MICHAEL MURRAY
13-2018 MDP-3
CATERPILLAR FINANCIAL SERVICES CORPORATION V. MURRAY

MOTION TO DISMISS
12-23-13 [47]

Tentative Ruling: The motion will be granted and the adversary proceeding will be dismissed.

The plaintiff, Caterpillar Financial Services Corporation, seeks dismissal of the sole claim in this adversary proceeding, brought under 11 U.S.C. § 523(a)(6).

Fed. R. Civ. P. 41(a)(2), as made applicable here via Fed. R. Bankr. P. 7041, provides that "Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice."

The defendant has answered the complaint but has not asserted any counterclaims. Docket 9.

As the plaintiff no longer desires to prosecute the action, the court will dismiss it pursuant to Rule 41(a)(2). The motion will be granted.

13. 11-42346-A-7 ERNEST BEZLEY
13-2292 GMW-1
BEZLEY V. JENNINGS

MOTION TO DISMISS
12-13-13 [10]

Tentative Ruling: The motion will be granted.

The defendants, Harold Jennings individually and Harold Jennings in his capacity as trustee of the Harold Jennings Revocable Trust Dated March 12, 2007, moves for dismissal of the claims in the subject amended complaint filed on November 13, 2013. The basis for the motion is Fed. R. Civ. P. 12(b)(6) and an alleged lack of standing by the plaintiff.

The plaintiff, Jacqueline Bezley, the non-filing spouse of the debtor in the underlying chapter 7 case, Ernest Bezley, opposes the motion.

The amended complaint contains the following claims:

(1) a claim for usury seeking declaratory relief that the Jennings Loans (consisting of the First 1999 Loan, the Second 1999 Loan, the 2006 Loan, the 2007 Loan, and the 2008 Loan) are usurious;

(2) a claim for usury as to the First 1999 Loan, the Second 1999 Loan and the 2008 Loan (secured by the plaintiff's and the debtor's Home Property in Clements, California), seeking "a set off [*sic*] to the principal amount owed in an amount equal to the interest paid in connection with" those loans and seeking a determination that the principal balances on the loans have been satisfied and that the corresponding deeds of trust must be reconveyed;

(3) a claim for accounting of the payments and their application to the Jennings Loans;

(4) a claim for usury as to the Jennings Loans (including the debtor's sale of Parcel 12 and payment of $23,129.19 in interest on account of the loan with the defendants), seeking damages, including treble damages against the defendants;

(5) a claim for usury seeking an injunction against the sale of the plaintiff's home property (the collateral for the First 1999 Loan, the Second 1999 Loan and the 2008 Loan);

(6) a claim seeking an offset (for the difference between loan balance and credit bid amount) pertaining to the foreclosure of the Parcel 13 property that served as collateral of the 2006 Loan.

Based on the foregoing claims, the complaint is seeking the disallowance of proofs of claim 7-1, 8-1 and 9-1.

The court has characterized the above claims according to the description of each claim in the narrative body of the complaint and not according to the headings prescribed by the plaintiff as to each claim.

The motion will be granted. The claims asserted by plaintiff are nearly identical to the claims asserted in a parallel adversary proceeding brought by the chapter 7 trustee, Adv. Proc. No. 13-2291. The trustee's adversary proceeding complaint expressly mentions the two 1999 loans, the 2006 loan, and the 2008 loan. Although it does not expressly mention the 2007 loan, the trustee's complaint pleads the existence of another $240,000 in loans made by the defendants "on an unknown date." The trustee alleges usury and he is seeking an accounting, declaration that the loans are invalid, reformation of the loans, and the recovery of interest and treble damages.

The fact that the plaintiff's complaint is not identical to the trustee's complaint is irrelevant. The plaintiff is asserting substantially the identical claims asserted by the trustee. The respective principal claims in the two complaints - that the loans are usurious - are identical. The remainder of the complaints focus merely on the various remedies sought by the plaintiff and the trustee.

The fact that the plaintiff is seeking the disallowance of the defendants' proofs of claim while the trustee's complaint is not seeking such relief is of no consequence. When the litigation of causes of action underlies the objection to a proof of claim, objecting to the proof of claim after the completion of the litigation is only a formality. In other words, if the trustee prevails in his adversary proceeding against the defendants, objecting to the defendants' proofs of claim will be only a formality, given that the

proofs of claim are based on the very loans the trustee is seeking to have declared void.

Finally, the argument by the plaintiff that she has a separate property interest, as a joint tenant, in the property that served as collateral for the loans extended by the defendants, is not helpful.

To the extent the plaintiff is not a creditor in the underlying bankruptcy case, she does not have any standing to assert claims on behalf of the estate.

To the extent the plaintiff is a creditor and she is seeking to assert claims that belong to the debtor's chapter 7 bankruptcy estate, she has not established to have the standing to do so. 11 U.S.C. § 704 charges only the trustee to administer's the debtor's chapter 7 estate. And, while the plaintiff may recover property of the estate and may object to proofs of claim, she may not do so without first obtaining a prior authorization from the bankruptcy court.

Lieu v. Wolkowitz (In re Maximus Computers, Inc.), 278 B.R. 189, 197 (B.A.P. 9th Cir. 2002) (holding that "Section 503(b)(3)(B) carries forward the long-settled authority under former Bankruptcy Act § 64a(1) for creditors [with prior court permission] to sue in the name of the trustee to recover property for the benefit of the estate and to be compensated as administrative expenses").

"[I]n order for a creditor . . . to obtain standing to object to another creditor's claims in such a case, the objecting party must first request the trustee to object to the claim, the trustee must refuse to object to the claim, and the Bankruptcy Court may then authorize the creditor . . . to proceed." In re Bakke, 243 B.R. 753, 756 (Bankr. D. Ariz. 1999).

To the extent the plaintiff is asserting claims in this proceeding that belong exclusively to her, the court does not have subject matter jurisdiction to resolve claims between two third parties that will not affect the administration of the bankruptcy estate in any way. To the extent the plaintiff is asserting her own rights against the defendants, the bankruptcy estate will not be affected in any way. More, as mentioned above, the trustee is already prosecuting the same claims on behalf of the estate. This court would not have even "related to" jurisdiction over the plaintiff's claims against the defendants.

Hence, to the extent the plaintiff is asserting claims that belong to the estate, the motion will be granted for lack of standing. To the extent the plaintiff is asserting her own claims against the defendants, the motion will be granted for lack of subject matter jurisdiction.

14.	13-21454-A-11 UST-2	TRAINING TOWARD SELF RELIANCE, A CALIFORNIA	MOTION TO CONVERT OR DISMISS CASE 12-10-13 [235]

Tentative Ruling: The motion will be denied.

The U.S. Trustee moves for conversion or dismissal on the basis that the debtor has failed to file a plan and disclosure statement as mandated by 11 U.S.C. § 1121(e)(2), given that the debtor is a small business debtor. The movant also contends that "Debtor's estate is diminished by its significant reduction in cash." Docket 235 at 5.

The debtor opposes the motion, contending that it checked the small business debtor box on the petition by mistake. The debtor contends that it is not a small business debtor and that the deadlines of 11 U.S.C. § 1121(e)(2) do not apply in this case.

As the debtor has filed an amended petition (Docket 243), correcting the small business debtor designation, the court is inclined to deny the motion.

As to the contention that the debtor's estate has been diminished because of the reduction in cash, the motion is not supported by any evidence on this point. In fact, there is no declaration in the record establishing the factual assertions in the motion.

15. 11-47056-A-11 HILL TOP LLC — MOTION TO CONVERT OR DISMISS CASE 12-9-13 [157]
UST-2

Final Ruling: This motion will be dismissed as moot because the case was dismissed on January 8, 2014.

16. 12-35168-A-11 GOVERNMENT TECHNOLOGY SOLUTIONS, INC. — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $9,0646.50, EXP. $540.74) 11-21-13 [189]
TTH-9

Tentative Ruling: The motion will be conditionally granted.

Timothy Huber, attorney for the debtor, has filed what appears to be his first and final motion for approval of compensation. The requested compensation consists of $90,646.50 in fees and $540.74 in expenses, for a total of $91,187.24. This motion covers the period from August 18, 2012 through October 15, 2013. The court approved the movant's employment as the attorney for the debtor in possession on September 19, 2012. In performing its services, the movant charged hourly rates of $375 and $100.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing schedules and statements not filed on the petition date, (2) communicating with the debtor about strategy, (3) preparing and attending the IDI and the meeting of creditors, (4) attending court hearings, (5) assisting the debtor in the preparation of operating reports, (6) preparing and prosecuting motion for the retaining of existing bank accounts, (7) preparing and prosecuting motion for the payment of pre-petition payroll, (8) defending a motion to dismiss or convert by the U.S. Trustee, (9) preparing and prosecuting motions for the approval of post-petition financing, (10) preparing and prosecuting motions for the extension of small business deadlines, (11) responding to a stay relief motion by Wells Fargo Bank, (12) negotiating the treatment of Wells Fargo Bank's claim, (13) analyzing issues pertaining to general unsecured claims, (14) analyzing and addressing preference issues, (15) preparing plan and disclosure statement, and (16) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved with one exception.

The movant states that "Attorney has $14,916.50 in trust to pay a portion of any fees awarded. The balance will be paid out of Debtor's operating profits on a schedule to be agreed upon between Attorney and Debtor that will not jeopardize plan performance." Docket 189 at 5.

As the debtor will have to pay $76,270.74 in compensation (the difference between $91,187.24 and $14,916.50) to the movant and the confirmed chapter 11 plan does not appear to provide for the payment of such compensation to the movant, the court will not approve the requested compensation in the absence of more than naked assurances and explanation of how the debtor is planning to pay such substantial compensation without jeopardizing plan payments.

17. 12-20773-A-13 LADANIEL/GRETCHEN KEY MOTION TO
13-2362 LDH-1 DISMISS ADVERSARY PROCEEDING
KEY ET AL V. WELLS FARGO BANK, N.A., ET AL. 12-13-13 [6]

Tentative Ruling: The motion will be granted.

One of the defendants in this proceeding, First American Trustee Servicing Solutions, LLC, moves for dismissal of the claim in the subject complaint, on the grounds of Rule 12(b)(6), judicial estoppel, privilege, the absence of an asserted duty or breach of a duty, lack of privity of contract, lack of standing, inapplicability of TILA, statute of limitations, etc.

The plaintiffs, Ladaniel and Gretchen Key, who are the debtors in the underlying chapter 13 bankruptcy case, oppose the motion.

The motion will be granted in part and the court will dismiss the subject claims.

The pertinent facts giving rise to the subject dispute are as follows. The plaintiffs borrowed money from Wells Fargo Bank in 2006 to finance the purchase of a real property in Vacaville, California. The plaintiffs gave Wells Fargo Bank a deed of trust in the property. Wells Fargo Bank assigned the deed of trust to U.S. Bank in 2008. The moving defendant, First American, is the successor trustee under the deed of trust, pursuant to a Substitution of Trustee recorded in July 2008.

According to the Schedule D in the underlying chapter 13 case, Wells Fargo Bank holds two claims secured by the property, a first and second mortgage for $399,816 and $99,204, respectively. It is not clear from the record when the plaintiffs obtained the second mortgage on the property with Wells Fargo Bank.

In or about June 2008, First American recorded a notice of default and election to sell pursuant to the deed of trust. A notice of trustee sale was recorded in December 2008.

The property was not foreclosed because the plaintiffs filed a chapter 13 bankruptcy case on December 29, 2008, Case No. 08-39269-E-13. That case was dismissed on February 25, 2010 due to the plaintiffs' failure to make plan payments.

The plaintiffs filed another chapter 13 bankruptcy case on March 23, 2010, Case No. 10-27264-A-13. That case was dismissed on December 7, 2011 due to the plaintiffs' failure to make plan payments.

The underlying chapter 13 bankruptcy case was filed on January 17, 2012, Case

No. 12-20773-A-13. The plaintiffs filed their schedules and statements, along with a chapter 13 plan, on the petition date. Dockets 1 and 5. The plaintiffs obtained plan confirmation of that plan on April 25, 2012. Docket 30. On April 15, 2013, the plaintiffs filed a modified chapter 13 plan and the court granted a motion approving the modified plan on August 12, 2013. Dockets 57 and 74. The plaintiffs filed another modified plan on October 7, 2013 and the court granted a motion approving the modified plan on November 15, 2013. Dockets 90 and 97.

The plaintiffs filed the instant adversary proceeding on November 15, 2013, asserting that:

- the foreclosure proceeding commenced before they filed their first chapter 13 case was unlawful because the proceeding was commenced "by parties who did not hold any beneficial interest in their Deed of Trust,"

- Wells Fargo Bank "failed to properly transfer Plaintiffs' mortgage to the Trust Pool before the Trust Pool closed,"

- as a result, all subsequent assignments by Wells Fargo Bank were void, and

- Wells Fargo Bank's offer of a "trial period" to the plaintiffs in July 2012 was "wrongful" because it "was merely providing a forbearance agreement," when it "could [have] reasonably be[en] interpreted as[] Well's [*sic*] Fargo offer of a trial loan modification that would convert to a permanent loan modification."

The named defendants are First American, Wells Fargo Bank, U.S. Bank and DOES 1-100. This adversary proceeding asserts the following causes of action:

(1) negligence in the way Wells Fargo Bank engaged the plaintiffs in offering them the trial period in 2012,

(2) breach of express agreements (deed of trust, pooling and servicing agreement) in that all three named defendants pursued a foreclosure on the property in 2008,

(3) breach of implied agreements in that all three named defendants pursued a foreclosure on the property in 2008,

(4) slander of title, as the 2008 recordings of the notice of default, substitution of trustee, assignment of deed of trust, and notice of trustee sale "were false, knowingly wrongful," etc. and were done with malice.

(5) violation of 18 U.S.C. § 1962, the federal RICO statute, for the "Defendants' sending of the fraudulent Assignment of Deed of Trust, Substitution of Trustee, Notice of Default and Notice of Trustee Sale," (Docket 1 ¶ 56) (also stating that "Defendants intended to induce Plaintiffs' reliance based on these misrepresentations and the continue to stand to profit from their wrongful actions if the wrongful foreclosure proceedings they initiated against Plaintiffs is allowed to continue," (Docket 1 ¶ 58)),

(6) TILA violations as to the 2008 assignment of the deed of trust,

(7) FDCPA violations as to the 2008 assignment of the deed of trust and the subsequent 2008 recordations of the notice of default and notice of trustee's sale (including alleged violations of Cal. Civ. Code § 2923.5),

(8) a claim for declaratory relief that the defendants violated Cal. Civ. Code §§ 2923.55 and 2924 and have no interest in the property, as the 2008 assignment of the deed of trust was improper, there was break in the chain of title, and the defendants attempted to wrongfully foreclose on the property in 2008, and

(9) violations of Cal. Buss. & Prof. Code §§ 17200, et seq., as to the 2008 assignment of the deed of trust and the subsequent 2008 recordations of the notice of default and notice of trustee's sale.

The plaintiffs are seeking the following remedies:

- actual damages,
- punitive damages,
- their costs of suit,
- declaratory relief that the July 2008 assignment of the deed trust is invalid,
- declaratory relief that the defendants have no interest in the real property,
- permanent injunction preventing the defendants from asserting any interest in the property or from attempting to dispossess the plaintiffs from possession of the property, and
- for judgment compelling the defendants to transfer title and possession of the property to the plaintiffs.

The plaintiffs are also demanding a jury trial.

Preliminarily, the court notes that the plaintiffs have possession and title to the subject real property. In the underlying chapter 13 proceeding, both the plaintiffs' confirmed (and now twice modified) plan and Schedule A indicate that the plaintiffs have title and possession of their property in Vacaville, California. The property is listed on Schedule A as their residence. The bankruptcy petition lists the property as their street address. Also, the last approved modified chapter 13 plan (Docket 90) lists Wells Fargo Bank's first mortgage on the property as a class 4 claim, while the bank's second mortgage has been stripped off and is in the pool of general unsecured claims, class 6, which are being paid a 0% dividend under the plan. Thus, the claims, to the extent they are seeking relief to compel the defendants to transfer title and possession of the property to the plaintiffs, will be dismissed for lack of constitutional standing.

To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

There is no injury in fact with respect to the request for relief to compel the defendants to transfer title and possession of the property to the plaintiffs.

Turning to the remaining aspect of the claims, this court does not have post-confirmation subject matter jurisdiction over the claim.

Bankruptcy jurisdiction extends to four types of title 11 matters, including any or all cases "under title 11," any or all proceedings "arising under title 11," any or all proceedings "arising in a case under title 11," and any or all proceedings "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006); see also 28 U.S.C. §§ 1334, 157.

The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." 28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to- (A) matters concerning the administration of the estate; . . . (F) proceedings to determine, avoid, or recover preferences; . . . [and] (K) determinations of the validity, extent, or priority of liens."

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1).

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. 28 U.S.C. § 1334(a). As to proceedings "arising under," "arising in," and "related to a case under title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id. Finally, a proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

"A bankruptcy court's 'related to' jurisdiction is very broad, including nearly every matter directly or indirectly related to the bankruptcy." Wilshire Courtyard v. California Franchise Tax Board (In re Wilshire Courtyard), 729 F.3d 1279, 1287 (9th Cir. 2013) (quoting Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 868 (9th Cir. 2005)).

However, this court's post-confirmation jurisdiction is "necessarily more limited" than its pre-confirmation jurisdiction. State of Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1194 n.1 (9th Cir. 2005).

Under Pegasus, the test for post-confirmation jurisdiction, where there is no bankruptcy estate any longer, is whether "'there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter.'" Pegasus at 1194 (quoting In re Resorts Int'l, Inc., 372 F.3d 154, 166-67 (3rd Cir. 2004)).

In applying the close nexus test, the Pegasus court focused on pre-confirmation

links, namely, the Zortman Agreement and the plan itself. The Zortman Agreement was a settlement agreement among the debtor, the State of Montana, and other parties, that had been approved by the bankruptcy court few days prior to plan confirmation. Pegasus at 1192.

The Pegasus court concluded that matters affecting the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus. Pegasus at 1193-94. The court indicated also that when the underlying litigation does not affect implementation of a plan but merely increases assets available for distribution under the plan, related to jurisdiction does not exist. "We specifically note that in reaching this decision, we are not persuaded by the Appellees' argument that jurisdiction lies because the action could conceivably increase the recovery to the creditors. As the other circuits have noted, such a rationale could endlessly stretch a bankruptcy court's jurisdiction." Pegasus at 1194 n.1 (citing Resorts, at 170); see also Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1133-35 (9th Cir. 2010); Sea Hawk Seafoods, Inc. v. State of Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.), 439 F.3d 545, 548 (9th Cir. 2006); Heller Ehrman LLP v. Gregory Canyon Ltd. (In re Heller Ehrman LLP), 461 B.R. 606, 608-10 (Bankr. N.D. Cal. 2011).

In the more recent Wilshire Courtyard decision, the Ninth Circuit revisited the post-confirmation jurisdiction test under Pegasus, stating that:

"The 'close nexus' test determines the scope of bankruptcy court's post-confirmation 'related to' jurisdiction. Pegasus Gold Corp., 394 F.3d at 1194. As adopted from the Third Circuit, the test encompasses matters 'affecting the "interpretation, implementation, consummation, execution, or administration of the confirmed plan."' Id. (quoting Binder v. Price Waterhouse & Co. (In re Resorts Int'l, Inc.), 372 F.3d 154, 166-67 (3d Cir.2004)). The close nexus test 'recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility.' Id.

"Applying the close nexus test in Pegasus Gold, we held that 'related to' jurisdiction existed because some claims concerning post-confirmation conduct—specifically, alleged breach of the liquidation/reorganization plan and related settlement agreement as well as alleged fraud in the inducement at the time of the plan and agreement—would 'likely require interpretation of the [settlement agreement and plan].' Id. The claims and remedies could also 'affect the implementation and execution' of the as-yet-unconsummated plan itself. Id.

. . .

"The [lower court] BAP 'distill[ed]' too narrow a version of the 'close nexus' test from Valdez Fisheries and Ray: '[T]o support jurisdiction, there must be a close nexus connecting a proposed post-confirmation proceeding in the bankruptcy court with some demonstrable effect on the debtor or the plan of reorganization.' (Citation omitted). Valdez Fisheries and Ray simply applied the Pegasus Gold 'close nexus' test to the unique—and distinguishable—facts of those cases. We reaffirm that a close nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to support jurisdiction when the matter 'affect[s] the interpretation, implementation, consummation, execution, or administration of the confirmed plan.' Pegasus Gold Corp., 394 F.3d at 1194 (internal citation and quotation marks omitted).

"The Pegasus Gold 'close nexus' test requires particularized consideration of

the facts and posture of each case, as the test contemplates a broad set of sufficient conditions and 'retains a certain flexibility.' Id. Such a test can only be properly applied by looking at the whole picture.

. . .

"Thus, under the 'close nexus' test, post-confirmation jurisdiction in this case extends to matters such as tax consequences that likely would have affected the implementation and execution of the plan if the matter had arisen contemporaneously. This application of the Pegasus Gold test does not prejudice either taxing entities or bankruptcy parties, nor requires the tax consequences to be assessed before transactions are consummated and taxes are due. It merely allows the bankruptcy court to retain jurisdiction over post-confirmation, post-consummation disputes related to the interpretation and execution of the confirmed Plan as if they had arisen prior to consummation. Thus, we reject CFTB's argument that jurisdiction was lacking because the bankruptcy case had been long since closed by the time the tax dispute began, and that neither the Plan nor Reorganized Wilshire could be affected."

Wilshire Courtyard at 1287, 1288-89, 1292-93.

In this case, eight of the nine causes of action are based on the 2008 assignment of the deed of trust and the subsequent 2008 recordations of the notice of default and notice of trustee's sale. The only claim not based on those events is the claim for negligence. The negligence claim is based on Wells Fargo Bank's July 2012 offer of a "trial period" to the debtors.

Although the events for eight of the claims took place in 2008, even before the plaintiffs filed their first bankruptcy case on December 29, 2008, the court did not take into account those eight claims in confirming and twice modifying the plaintiffs' chapter 13 plan in the underlying bankruptcy case. Neither the schedules in this underlying bankruptcy case, nor the schedules in the plaintiffs' two prior chapter 13 cases mention any of the eight claims arising from the events that transpired in 2008. The plaintiffs' confirmed and now twice modified chapter 13 plan in the underlying bankruptcy case makes no mention of the claims either.

As a result, the eight claims arising from the events that transpired in 2008 do not affect the interpretation, implementation, consummation, execution, or administration of the plaintiffs' confirmed and now twice modified chapter 13 plan. The resolution of the eight claims will not have an effect on how the plan is interpreted, implemented, consummated, executed, or administered because the terms of the plan do not take into consideration the relief the plaintiffs are seeking in the subject adversary proceeding. The terms of the plan have been set and there is no reason, at least at this time, for the court to revisit the terms of the plan because of this adversary proceeding.

Hence, this court does not have post-confirmation jurisdiction over the eight claims arising from the events that transpired in 2008.

Further, even if this court had post-confirmation jurisdiction over the eight claims that arise from events that transpired in 2008, those eight claims will be dismissed because of judicial estoppel.

Judicial estoppel bars the prosecution of a claim by a debtor who previously failed to disclose the claim in his bankruptcy schedules. Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 784-85 (9th Cir. 2001). "In the bankruptcy

context, a party is judicially estopped from asserting a cause of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements." Hamilton at 783.

"In the bankruptcy context, the federal courts have developed a basic default rule: If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars the action. See, e.g., Payless Wholesale Distribs., Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570, 571 (1st Cir.1993) ('Conceal your claims; get rid of your creditors on the cheap, and start over with a bundle of rights. This is a palpable fraud that the court will not tolerate, even passively.'); Hay v. First Interstate Bank of Kalispell, N.A., 978 F.2d 555, 557 (9th Cir. 1992) (holding that '[f]ailure to give the required notice [to the bankruptcy court] estops [the plaintiff-debtor] and justifies the grant of summary judgment to the defendants'). The reason is that the plaintiff-debtor represented in the bankruptcy case that no claim existed, so he or she is estopped from representing in the lawsuit that a claim does exist. That basic rule comports fully with the Supreme Court's decision in New Hampshire [v. Maine, 532 U.S. 742 (2001)]: (1) the positions are clearly inconsistent ('a claim does not exist' vs. 'a claim does exist'); (2) the plaintiff-debtor succeeded in getting the first court (the bankruptcy court) to accept the first position; and (3) the plaintiff-debtor obtained an unfair advantage (discharge or plan confirmation without allowing the creditors to learn of the pending lawsuit). The general rule also comports fully with the policy reasons underlying the doctrine of judicial estoppel: to prevent litigants from playing 'fast and loose' with the courts and to protect the integrity of the judicial system. New Hampshire, 532 U.S. at 749-50, 121 S.Ct. 1808."

Ah Quin v. County of Kauai Dept. of Transp., 733 F.3d 267, 271 (9th Cir. 2013).

The debtor must know enough facts to know that a claim exists during the pendency of the bankruptcy case. Hamilton at 784-85.

"The application of judicial estoppel is not limited to bar the assertion of inconsistent positions in the same litigation, but is also appropriate to bar litigants from making incompatible statements in two different cases." Hamilton at 783.

Accordingly, the court considers three factors in determining whether to apply judicial estoppel: (1) whether a party's later position is "clearly inconsistent" with its earlier position, (2) whether the first court accepted the party's earlier position, and (3) whether the party seeking to assert an inconsistent position would receive an unfair advantage if not estopped. Becker v. Wells Fargo Bank, CIV. No. 2:12-1742 WBS EFB, 2012 WL 5187792, at *3 (E.D. Cal. Oct. 18, 2012) (citing New Hampshire v. Maine, 532 U.S. 742, 750–51, 121 S.Ct. 1808, 149 L. Ed. 2d 968 (2001)).

As discussed above, the eight claims arose from events that transpired in 2008, before the filing of the bankruptcy case in December 2008, namely, from the 2008 assignment of the deed of trust by Wells Fargo Bank and the subsequent 2008 recordations of the notice of default and notice of trustee's sale.

The eight claims are clearly pre-petition and should have been listed in the schedules as a pre-petition asset of the estate. The claims have not been disclosed in Schedule B or the chapter 13 plan of the underlying case.

Thus, by asserting the eight claims at this time, the plaintiffs are taking a

position that is clearly inconsistent with the absence of the claims from the schedules and plan.

This court accepted the plaintiffs' earlier position - of not having any interest in the eight claims - when the court confirmed the plaintiffs' chapter 13 plan on April 25, 2012. Case No. 12-20773, Docket 30. The court accepted the plaintiffs' earlier position also when it approved two subsequent modified versions of the plan. On April 15, 2013, the plaintiffs filed a modified chapter 13 plan and the court granted a motion approving the modified plan on August 12, 2013. Case No. 12-20773, Dockets 57 and 74. The plaintiffs filed another modified plan on October 7, 2013 and the court granted a motion approving the modified plan on November 15, 2013. Case No. 12-20773, Dockets 90 and 97. There is no mention of the eight claims in either of the motions seeking the approval of the modified plans. Case No. 12-20773, Dockets 58 and 85.

More, the plaintiffs' Schedule D lists Wells Fargo Bank, one of the defendants in this adversary proceeding, as holding first and second mortgages on the property.

And, all three versions of the plaintiffs' chapter 13 plan provide for the payment of Wells Fargo Bank's first mortgage claim on the subject real property. The initial version of the plan provided for the payment of Wells Fargo Bank's first mortgage claim as a class 1 claim and the last modified plan provides for the payment of Wells Fargo Bank's first mortgage claim as a class 4 claim. Case No. 12-20773, Dockets 5 & 90.

Schedule D and the plaintiffs' plans also provide for a second mortgage held by Wells Fargo Bank. That mortgage is being paid as a stripped off general unsecured claim.

In other words, Schedule D and all versions of the plaintiffs' chapter 13 plans acknowledge that the plaintiffs owe mortgage claims on the subject real property.

In contrast, here the plaintiffs are asking the court to declare that the defendants - including Wells Fargo Bank - do not have any interest in the real property. Docket 1 at 24.

Each of the three versions of the plaintiffs' plan in the underlying case provides that the general unsecured creditors will receive a 0% dividend. Case No. 12-20773, Dockets 5, 57, 90.

Clearly, if the plaintiffs are not estopped from asserting those eight claims at this time, they would receive an unfair advantage - namely, the confirmation and approval of modifications of a plan that pays general unsecured creditors a 0% dividend, while the plaintiffs are seeking a judgment for actual damages, for punitive damages, for costs of suit, for declaring that the plaintiffs own the real property free of any claims held by the defendants, including Wells Fargo Bank, and for enjoining the defendants from claiming any interest in the subject property.

The eight claims were not taken into consideration by the court when it confirmed and approved the modifications of the plan. See 11 U.S.C. § 1329(b)(1) (providing that the good faith requirements of 11 U.S.C. § 1325(a)(3) apply to the obtaining of approval of a modified plan post-confirmation). If the court were aware of the eight claims in this proceeding

prior to confirming and approving the modifications of the plaintiffs' chapter 13 plan, the court would not have granted confirmation or approval of the modifications because the plan would have failed the hypothetical liquidation test, *i.e.*, whether general unsecured creditors are receiving at least what they would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4); see also 11 U.S.C. § 1329(b)(1).

Based on the plaintiffs' representations in the underlying bankruptcy case, the court concludes that judicial estoppel bars the prosecution of the eight claims.

Judicial estoppel also applies because of the plaintiffs' representations in the two prior chapter 13 cases. The plaintiffs did not list the eight claims in Schedule B of either of the two prior chapter 13 cases. Yet, the plaintiffs obtained confirmation of chapter 13 plans in each of the prior cases and those plans did not disclose or take into consideration any of the subject eight claims, even though the claims arose prior to the filing of the first chapter 13 case in December 2008. Also, in both prior cases, the plans provided a 0% dividend to unsecured creditors, while paying Wells Fargo Bank's first mortgage claim on the property as a class 1 claim.

The court notes that the plaintiffs have made virtually no effort to address the applicability of judicial estoppel to the claims in this proceeding. The opposition discusses res judicata and collateral estoppel, without addressing the peculiarities of judicial estoppel. Docket 18 at 6-7.

Lastly, the claim for negligence (claim 1) will be dismissed as to First American because the claim alleges misconduct only against Wells Fargo Bank. The misconduct allegedly arose from an "unconventional relationship" between the plaintiffs and Wells Fargo Bank, when Wells Fargo Bank "engag[ed] [the plaintiffs] to enter into a trial loan modification plan." Docket 1 at 5. Also, the misconduct at issue pertains to a purported "trial period" offered by Wells Fargo Bank in 2012.

There are no facts in the complaint connecting First American to any conduct pertaining to the plaintiffs in 2012. The plaintiffs filed the underlying chapter 13 case on January 17, 2012 and were in bankruptcy for the remainder of the year. Additionally, First American has not been listed as a creditor in the schedules or any of the versions of the plaintiffs' chapter 13 plan in the underlying bankruptcy case.

The claims against First American will be dismissed without leave to amend in accordance with this ruling.

18. 12-20773-A-13 LADANIEL/GRETCHEN KEY — MOTION TO DISMISS ADVERSARY PROCEEDING
13-2362 SW-1
KEY ET AL V. WELLS FARGO BANK, N.A., ET AL. — 12-16-13 [9]

Tentative Ruling: The motion will be granted.

Defendants Wells Fargo Bank and U.S. Bank move for dismissal of the claims in this proceeding.

The plaintiffs oppose the motion.

The motion will be granted with respect to all the claims in the proceeding, except for the negligence claim against Wells Fargo Bank, in accordance with

the ruling on the related dismissal motion brought by First American Trustee Servicing Solutions, LLC.

As to the negligence claim asserted by the plaintiffs, that claim will be dismissed as to U.S. Bank because the claim alleges misconduct only against Wells Fargo Bank. The misconduct allegedly arose from an "unconventional relationship" between the plaintiffs and Wells Fargo Bank, when Wells Fargo Bank "engag[ed] [the plaintiffs] to enter into a trial loan modification plan." Docket 1 at 5. Also, the misconduct at issue pertains to a purported "trial period" offered by Wells Fargo Bank in 2012.

There are no facts in the complaint connecting U.S. Bank to any conduct pertaining to the plaintiffs in 2012. The plaintiffs filed the underlying chapter 13 case on January 17, 2012 and were in bankruptcy for the remainder of the year.

Additionally, U.S. Bank has not been listed as a creditor in the schedules or any of the versions of the plaintiffs' chapter 13 plan in the underlying bankruptcy case. The negligence claim against U.S. Bank will be dismissed without leave to amend.

Finally, as to Wells Fargo Bank, the negligence claim will be dismissed as well but for a different reason.

The court's post-confirmation jurisdiction and judicial estoppel discussion in the ruling on the related dismissal motion by First American is incorporated here by reference.

The underlying chapter 13 bankruptcy case was filed on January 17, 2012, Case No. 12-20773-A-13. The plaintiffs filed their schedules and statements, along with a chapter 13 plan, on the petition date. Case No. 12-20773, Dockets 1 and 5. The plaintiffs obtained plan confirmation of that plan on April 25, 2012. Docket 30.

The purported negligence claim arose nearly three months after the court confirmed the plaintiffs' chapter 13 plan on April 25, 2012.

The negligence misconduct allegedly arose from an "unconventional relationship" between the plaintiffs and Wells Fargo Bank, when Wells Fargo Bank "engag[ed] [the plaintiffs] to enter into a trial loan modification plan" in July 2012. Docket 1 at 4-5.

On April 15, 2013, the plaintiffs filed a modified chapter 13 plan and the court granted a motion approving the modified plan on August 12, 2013. Case No. 12-20773, Dockets 57 and 74. The plaintiffs filed another modified plan on October 7, 2013 and the court granted a motion approving the modified plan on November 15, 2013. Case No. 12-20773, Dockets 90 and 97. The plaintiffs filed the instant adversary proceeding on November 15, 2013.

Hence, the negligence claim arose about three months after the court confirmed the plaintiffs' initial chapter 13 plan on April 25, 2012 but about 13 months before the court approved a plan modification on August 12, 2013 and about 16 months before the court approved another plan modification on November 15, 2013. No version of the plaintiffs' plan takes into consideration the negligence claim and the relief the plaintiffs are seeking against Wells Fargo Bank.

As the plaintiffs' chapter 13 plan does not take into account the negligence claim, the adjudication of the claim does not affect the interpretation, implementation, consummation, execution, or administration of the plaintiffs' plan. The terms of the plan do not take into consideration the relief the plaintiffs are seeking pursuant to the negligence claim. Thus, the court does not have post-confirmation subject matter jurisdiction over the negligence claim.

Another reason the court lacks post-confirmation jurisdiction over the negligence claim is the tension between 11 U.S.C. §§ 1306(a)(1) and 1327(b)-(c) and the fact that the plaintiffs have chosen to vest all property of the estate in themselves as the debtors.

11 U.S.C. § 1306(a) provides that "Property of the estate includes, in addition to the property specified in section 541 of this title— (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first."

11 U.S.C. § 1327 prescribes as follows:

"(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

"(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

"(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan."

In the underlying bankruptcy case, the plaintiffs have chosen to vest all property of the estate in themselves as the debtors. Case No. 12-20773, Dockets 5, 57, 90.

In other words, not only that the negligence claim has not been taken into account by the plaintiffs' confirmed chapter 13 plan, but the negligence claim has been vested in the plaintiffs already and it is no longer property of the estate for 11 U.S.C. § 1306(a)(1) purposes. This is yet another reason why adjudication of the negligence claim will not affect the interpretation, implementation, consummation, execution, or administration of the plaintiffs' plan. The court does not have post-confirmation subject matter jurisdiction over the negligence claim.

Even if it does have post-confirmation jurisdiction, however, the court will dismiss the claim based on judicial estoppel.

11 U.S.C. § 1329(b)(1) provides that "Sections 1322 (a), 1322 (b), and 1323 (c) of this title and the requirements of section 1325 (a) of this title apply to any modification under subsection (a) of this section."

Under 11 U.S.C. § 1325(a), "the court shall confirm a plan if- (3) the plan has been proposed in good faith and not by any means forbidden by law," meaning

that good faith is an integral part of obtaining approval of a modified plan post-confirmation.

After the facts giving rise to the negligence claim took place, the plaintiffs asked the court twice to approve a modification of their chapter 13 plan. The court approved the first modification on August 12, 2013 and approved the second modification on November 15, 2013.

Therefore, to the extent the negligence claim is subject to 11 U.S.C. § 1306(a)(1) and the plaintiffs were required to disclose it in connection with their obtaining approval of the plan modifications - as part of the good faith requirement of 11 U.S.C. § 1325(a)(3) - judicial estoppel applies as there is no mention of the negligence claim in either of the two motions seeking approval of the modified plans. Case No. 12-20773, Dockets 58 and 85; see, e.g., In re Adams, 481 B.R. 854, 858-62 (Bankr. N.D. Miss. 2012) (holding in a chapter 13 case that the debtor had a duty to disclose a cause of action that accrued post-petition and post-confirmation, but without mentioning whether the plan had provided for the revestment of property in the debtor).

Stated differently, the plaintiffs' prosecution of the negligence claim now is clearly inconsistent with their position in the plan modification motions that there are no new assets to disclose and no new assets should be taken into consideration in assessing the approval of the modifications.

This court accepted the plaintiffs' earlier position, in their requests for plan modification, by granting those requests. The plaintiffs would receive an unfair advantage if not estopped from prosecuting the negligence claim because they obtained modification approval of a plan that provides for a 0% dividend to general unsecured claims.

If the court were aware of the negligence claim at the time it was asked to approve the plan modifications, it would have denied approval because the plan would have failed the hypothetical liquidation test, *i.e.*, whether general unsecured creditors are receiving at least what they would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4); see also 11 U.S.C. § 1329(b)(1). Thus, the negligence claim is barred by judicial estoppel.

19. 12-20773-A-13 LADANIEL/GRETCHEN KEY — STATUS CONFERENCE
13-2362 — 11-15-13 [1]
KEY ET AL V. WELLS FARGO BANK, N.A., ET AL.

Tentative Ruling: None.

20. 12-20874-A-11 MARK/JUANITA BALLARD — MOTION TO CONVERT OR DISMISS CASE
UST-2 — 12-23-13 [139]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for dismissal pursuant to 11 U.S.C. § 1112(b), arguing that the case is approximately two years old and the debtors have done nothing in the case for the last one year, except for filing monthly operating reports, and the debtors have not filed their plan and disclosure statement. In the alternative, the movant is asking for the court to set a firm deadline for the filing of a plan and disclosure statement.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes [for example] (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross mismanagement of the estate; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(A), (B), (F). The above instances of cause are not exhaustive. For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

This case was filed on January 17, 2012 and the debtors have not filed a plan. While the debtors filed a disclosure statement, that statement was filed on January 6, 2014, and in response to this motion. The approval of the disclosure statement has been set for hearing on March 3, 2014.

The opposition does not explain why the debtors have done nothing during the last year to obtain approval of the disclosure statement and obtain confirmation of a plan.

More, while the opposition says that the debtors are making adequate protection payments to creditors and accumulating cash, the opposition is not supported by admissible evidence to establish these factual assertions. There is no declaration establishing the factual assertions in the opposition. The opposition does not even make an effort to explain whether, why or how the debtors are planning to reorganize.

Based on the two-year age of this case and the absence of evidence from the debtors in support of their opposition to this motion, the court infers that there is no reasonable likelihood of reorganization.

The court also notes that this case is quite simple. The debtors own one real property. They do not live in it. The property is subject to two mortgages, for $490,083 and $49,995. The junior mortgage has been stripped off while the senior mortgage has been stripped down to the value of the property, $290,000. Also, the debtors have stripped down a $33,827 claim secured by an RV to $29,865. There are no other secured claims.

The delay in the prosecution of this case is inexcusable as this should have been a chapter 13 case, where the debtors would have had to file a plan within 15 days of the petition date and obtain confirmation within 45 days after the meeting of creditors. The debtors easily satisfy the chapter 13 debt limits, *i.e.*, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525.

The debtors' general unsecured claims in Schedule F are $93,225 and the debtors have no creditors in Schedule E. Their general unsecured claims, after taking into account the stripped off and stripped down claims, total approximately $348,000.

Nevertheless, the debtors have been in this chapter 11 for over two years now,

without any explanation why they have not filed a plan and disclosure statement and obtained plan confirmation. This delay is taking place while, at the least, general unsecured claims and the stripped portion of secured claims are not receiving any payments.

The court concludes that the debtors' delay is unreasonable and has been prejudicial to creditors. This is cause for conversion or dismissal of the case.

As the debtors have accumulated over $66,000 in cash during the last two years, the court will convert the case to chapter 7 so that the cash can be administered to creditors. The motion will be granted.

21. 12-41197-A-11 JOHN/MARTA SCHULZE — MOTION TO CONFIRM PLAN
JHH-5 — 9-5-13 [76]

Tentative Ruling: The hearing on this motion was continued from December 9, 2013 for a status conference. Docket 102.