UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

January 28, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-90204-D-13 CJY-3	LEONARDO/JESUSA MANGROBANG	MOTION TO MODIFY PLAN 12-17-13 [62]

Tentative ruling:

This is the debtors' motion to confirm a modified chapter 13 plan. The trustee and Bank of America (the "Bank") filed oppositions, and the debtors have filed replies to both. It appears the Bank's opposition has been resolved. The trustee opposed the motion on the ground that it appeared from the debtors' amended Schedules I and J that their business income had dropped significantly in the nine months since the filing of the case, without explanation. The court believes that only appears to be the case, since the debtors' original Schedules I and J listed their gross business income on Schedule I and their business expenses on Schedule J, whereas the new official forms required them to list their net business income on their amended Schedule I.

The court has another concern, however. The debtors state they were not approved for a mortgage loan modification, so they have moved out of their house and are now renting. The court questions why, then, they continue to show a $266 per month expense for property taxes on their amended Schedule J. The contribution of

that amount into the plan for the remainder of the plan term would yield over 10%, approximately, to general unsecured creditors. With the deduction of this expense which the debtors, now that they are renting, apparently no longer pay, the court is not convinced the plan has been proposed in good faith.

The court will hear the matter.

2.	13-92204-D-13 TOG-1	JORGE HERNANDEZ AND ANA PEREIRA	MOTION TO VALUE COLLATERAL OF NATIONWIDE CREDIT, INC. 12-31-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Nationwide Credit, Inc. at $0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Nationwide Credit, Inc.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3.	13-90205-D-13 PGM-5	MATTHEW/JOSIELYNN CRUDO	MOTION TO CONFIRM PLAN 12-11-13 [119]

4.	11-91310-D-13 CJY-1	ERIC/REBECCA BURKE	MOTION TO MODIFY PLAN 12-19-13 [64]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 10-94321-D-13 SIMONE FRANK — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A.
JDP-1 — 12-26-13 [32]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of JP Morgan Chase Bank, N.A. at $0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase Bank, N.A.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

6. 09-92125-D-13 JAMES PECK — MOTION TO MODIFY PLAN
DEF-5 — 12-13-13 [78]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

7. 11-92328-D-13 DALE/GLORIA BOUCHER — MOTION TO REVOKE THE FIRST MODIFIED PLAN
JML-1 — 12-31-13 [146]

Final ruling:

This is the motion of creditor Robin Hinchman to revoke the court's order entered July 9, 2013 confirming the debtors' first modified chapter 13 plan. The motion will be denied because the relief requested is relief that must be sought by adversary proceeding. Fed. R. Bankr. P. 7001(5). As a result of this procedural defect the motion will be denied by minute order. No appearance is necessary.

8. 10-93236-D-13 GREGORY/JANICE ANDERSON — MOTION TO MAINTAIN CHAPTER 13 CASE OPEN PENDING RESOLUTION OF SECURED MORTGAGE LIEN REMOVAL WITH JUNIOR DEED OF TRUST HOLDER BANK OF AMERICA
CWC-5 — 12-18-13 [124]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to maintain Chapter 13 case open pending resolution of secured mortgage lien removal with junior deed of trust holder Bank of America is supported by the record. As such the court will grant the motion to maintain Chapter 13 case open pending resolution of secured mortgage lien removal with junior deed of trust holder Bank of America. Moving party is to submit an appropriate order. No appearance is necessary.

9. 11-93636-D-13 ALENE WILLIAMS MOTION TO MODIFY PLAN
JCK-2 12-24-13 [41]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

10. 13-92140-D-13 ARTURO/MARISELA BARAJAS MOTION TO VALUE COLLATERAL OF
JDP-1 CITY OF CERES
12-18-13 [22]

Final ruling:

This is the debtors' motion to value collateral of the City of Ceres, California (the "City"). The motion will be denied because the moving parties failed to serve the City in strict compliance with Fed. R. Bankr. P. 7004(b)(6), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the City to the attention of an officer, managing or general agent, or agent for service of process, which is appropriate for service on a private corporation, partnership, or other unincorporated association. Fed. R. Bankr. P. 7004(b)(3). By contrast, service on a state or municipal corporation or other governmental organization must be to the person or office upon whom process is prescribed to be served by the law of the state in which service is made (Fed. R. Bankr. P. 7004(b)(6)), which, in California, means service on "the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Code Civ. Proc. § 416.50(a). If service on a municipal corporation or other governmental organization, such as the City, could be accomplished in the same manner as service on a private corporation, partnership, or other unincorporated associated, the distinction made by the two subdivisions of Fed. R. Bankr. 7004(b) would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

11. 13-92140-D-13 ARTURO/MARISELA BARAJAS MOTION TO VALUE COLLATERAL OF
JDP-2 HOUSING FINANCE AGENCY
12-18-13 [16]

Final ruling:

This is the debtors' motion to value collateral of the California Housing Finance Agency (the "Agency"), a state agency. The motion will be denied because the moving parties failed to serve the Agency in strict compliance with Fed. R. Bankr. P. 7004(b)(6), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Agency to the attention of an officer, managing or general agent, or agent for service of process, which is appropriate for service on a private corporation, partnership, or other unincorporated association. Fed. R. Bankr. P.

7004(b)(3). By contrast, service on a state or municipal corporation or other governmental organization must be to the person or office upon whom process is prescribed to be served by the law of the state in which service is made (Fed. R. Bankr. P. 7004(b)(6)), which, in California, means service on "the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Code Civ. Proc. § 416.50(a). (The rule applies to any agency of the state. Cal. Code Civ. Proc. § 416.50(b).) If service on a municipal corporation or other governmental organization, such as the Agency, could be accomplished in the same manner as service on a private corporation, partnership, or other unincorporated associated, the distinction made by the two subdivisions of Fed. R. Bankr. 7004(b) would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

12. 13-92140-D-13 JDP-3 — ARTURO/MARISELA BARAJAS — MOTION TO VALUE COLLATERAL OF BEST BUY 12-18-13 [8]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

13. 13-92140-D-13 JDP-4 — ARTURO/MARISELA BARAJAS — MOTION TO VALUE COLLATERAL OF BEST BUY 12-18-13 [12]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

14. 13-91241-D-13 JCK-1 — OSCAR DE LA O AND KATRINA RODRIGUEZ — MOTION TO MODIFY PLAN 12-19-13 [15]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

15. 12-91246-D-13 CJY-8 — BARRY/ELIZABETH WORTHAM — MOTION TO MODIFY PLAN 12-17-13 [126]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

16. 13-91750-D-13 SL-2 — CHRISTY BENAFIELD — MOTION TO CONFIRM PLAN 11-22-13 [33]

17. 13-91251-D-13 TOG-2 — CARL/CHRISTINE CARPENTER — CONTINUED MOTION TO CONFIRM PLAN 10-16-13 [36]

Tentative ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition, and the debtors have filed a reply. For the following reasons, the court agrees with the trustee, and the motion will be denied.

When this case was filed, on July 1, 2013, the debtors reported their combined income as $14,180 per month gross, $10,522 net. The debtors' Form 22C reported their annualized current monthly income as more than double the median-family income for a household of four, such as the debtors'. They reported the expenses of their household, which then included their 17- and 13-year old children, as $4,128 per month, leaving monthly net income of $6,394. They proposed a plan under which they would pay less than half of that, or $3,125 per month, for 60 months, from which would be paid their mortgage payment plus a payment toward pre-petition arrears, car payments of $677 and $128 plus a couple of small car payments, about $5,000 in taxes, and a 100% dividend on general unsecured claims estimated at only $700.

The debtors' original Schedules I and J indicated they anticipated no changes to either their income or their expenses. Yet just two and one-half months later, the debtors filed amended Schedules I and J on which they reported their income had dropped significantly – for the debtor by over $1,400 per month gross and for the joint debtor by over $1,100 per month. Their net income was now reported at $8,700,

down by $1,822. Rather than reducing their expenses, the debtors' amended Schedule I reported they had added the mother of one of the debtors to their household, and their amended Schedule J showed they had increased most of their expenses (including transportation from $900 to $1,500 per month), for a new total of $5,253, up by $1,125. Thus, their monthly net income was now shown as $3,447.

One month later, the debtors filed second amended Schedules I and J, this time showing their net income as $309 higher, as a result of their payoff of one of their 401(k) loans, with no further changes to their expenses (although they are now showing both of their mothers as residing with them). Thus, their monthly net income is now $3,757.[1] They propose an amended plan under which they would pay $3,020 per month for 60 months, so as to pay the same classified claims as in their original plan, except for tax debt increased to $7,504. The plan still proposes a 100% dividend on general unsecured claims totaling $700. (Filed general unsecured claims, including the non-priority portion of the tax claims, have come in at $2,699.)

The trustee's position is that the debtors are not required to stay in a 100% plan in order to meet the liquidation test; thus, the plan would put unsecured creditors at risk of a subsequent modification that would lower the dividend. The court agrees. The debtors have already encountered a dramatic downtown in their financial circumstances, with a sizeable drop in both their incomes and substantial increases in their expenses, such that their monthly net income has dropped from $6,394 to $3,757, just six months into the case. Permitting the debtors to retain a not insubstantial amount of excess income each month, $737, would permit them to benefit themselves while their general unsecured creditors bear the risk of further negative developments in their financial situation – developments that may cause them to modify the plan and adjust the dividend downward or eliminate it entirely or to convert the case to chapter 7.

The court is aware of a few cases (none from a court in the Ninth Circuit) that suggest or hold that where a debtor proposes a 100% plan, the court may not consider the amount of the debtor's excess income in determining whether the plan has been proposed in good faith. See In re Johnson, 2011 Bankr. LEXIS 1649, *10 (Bankr. N.D. Iowa May 3, 2011) (collecting cases). Other courts disagree. See id.

This court is in the latter camp. The proposition that the question of a debtor's disposable income is simply not in issue in a 100% plan apparently has no boundaries; thus, a debtor might use a significant portion of his disposable income for gambling, for example, or expensive vacations, so long as he proposes a 100% plan. This position would lead to absurd results, and because it would allow the debtor to immediately benefit himself while exposing his creditors to the lion's share of the risk of future negative developments in his financial situation, it would directly contravene one of the fundamental purposes of BAPCPA – "to help ensure that debtors who can pay creditors do pay them." Ransom v. FIA Card Servs., N.A., 131 S. Ct. 716, 721 (2011). Finally, in many cases, it would lead to the ironic result that debtors who are better off financially, such that they can afford to propose a 100% plan in the first place, would be free to retain all of their excess income, no matter how much greater than the required plan payments, while debtors who are less well-off, and consequently, less able to pay their creditors, are, if the trustee or an unsecured creditor objects, constrained to devote all of their excess income to the plan for its duration.

In short, the court believes that in cases where the debtor has significant disposal income that is not being paid into the plan, that circumstance may

constitute bad faith, even if the debtor is proposing a 100% plan. In this case, the debtors have already encountered negative changes in both their income and their expenses, as to which they have offered no explanation. The court has no reason to conclude such changes will not occur again during the term of the plan. There is no reason general unsecured creditors, whose claims are, after all, quite small, should have to bear the lion's share of the risk, while the debtors retain for themselves a sizeable cushion of excess income each month. The trustee takes the position that the plan is not proposed in good faith, and the court agrees.

The trustee has, however, now proposed a compromise – he would be agreeable to an increase in the plan payment to $3,400 per month, which would still leave the debtors with a $357 per month cushion. The court would confirm such a plan. The court also agrees with the trustee that, absent such a compromise, the motion should be denied.

The court will hear the matter.

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1 The debtors have not explained any of these changes to their income or expenses, except to say that their expenses have increased slightly since the filing.

18. 13-91157-D-13 DEF-4 — MARTIN PRICE — MOTION TO APPROVE LOAN MODIFICATION 12-23-13 [69]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

19. 10-93964-D-13 CJY-4 — ROBERT/MARGARET SHAW — MOTION TO EXCUSE DEBTOR ROBERT A. SHAW FROM COMPLETING 11 U.S.C. SECTION 1328 CERTIFICATE AND 522 EXEMPTIONS 12-18-13 [68]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to excuse debtor, Robert A. Shaw, from completing 11 U.S.C. Section 1328 Certificate and 522 exemptions is supported by the record. As such the court will grant the motion to excuse debtor, Robert A. Shaw, from completing 11 U.S.C. Section 1328 Certificate and 522 exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

20. 13-91767-D-13 RDG-1 — EDWARD JONES — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-22-13 [15]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

21. 13-91668-D-13 LORENZO/LEONOR LAZARO — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON 11-26-13 [41]
PPR-1

22. 10-90569-D-13 ELLIS/JUDITH JOHNSON — MOTION TO MODIFY PLAN 12-18-13 [37]
CJY-1

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

23. 09-90473-D-13 JEFFREY/KRISTI HALE — MOTION TO MODIFY PLAN 12-11-13 [68]
DCJ-4

24. 12-92273-D-13 DEBBIE DEAN — MOTION TO MODIFY PLAN 12-9-13 [84]
DEF-6

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

25. 10-94980-D-13 JCK-1 — DARRON/ANNA NIELSEN — MOTION TO MODIFY PLAN 12-19-13 [46]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26. 12-90583-D-13 CJY-5 — GEORGE MUNOZ AND DIANE PARRA — MOTION TO MODIFY PLAN 12-16-13 [71]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

27. 13-91686-D-13 JAD-2 — ROBERT/KATHY STATON — MOTION TO VALUE COLLATERAL OF U.S. BANK 12-17-13 [27]

Final ruling:

This is the debtors' motion to value collateral of U.S. Bank (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) by first-class mail to the attention of an "Officer, Managing or General Agent"; and (2) by certified mail to the attention of an "Officer, Managing or General Agent," whereas service on an FDIC-insured institution, such as the Bank, must be to the attention of an officer, and only an officer.

This distinction is important. Fed. R. Bankr. P. 7004(b)(3), which governs service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, requires service to the attention of an officer, managing or general agent, or agent for service of process. By contrast, Fed. R. Bankr. P. 7004(h), which governs service on an FDIC-insured institution, requires service of the attention of an "officer." If service to the attention of an "Officer, Managing or General Agent" were appropriate for service on an FDIC-insured institution, the distinction between subdivisions (b)(3) and (h) of Fed. R. Bankr. P. 7004 would be superfluous. (The first method of service, described above, was insufficient for the additional reason that service on an FDIC-insured institution must be by certified mail. Fed. R. Bankr. P. 7004(h).)

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

28. 11-90694-D-13 AMBRA BILBRO
CJY-1

MOTION TO MODIFY PLAN
12-18-13 [67]

29. 12-92196-D-13 DALE STEELEY
JAD-2

MOTION TO MODIFY PLAN
12-11-13 [36]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

30. 09-91699-D-13 VICTOR/ELAINE LARA
CJY-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRIEND YOUNGER, PC FOR JAMES D. PITNER, DEBTORS' ATTORNEY(S), FEES: $1,568.75, EXPENSES: $0.00
12-24-13 [93]

Tentative ruling:

This is the motion of the debtors' counsel in this case ("Counsel") for additional attorney's fees. Counsel requests approval of $1,568.75 in addition to the $3,500 Counsel has already received. Although no party has filed opposition, the court has an independent duty to review all requests for compensation and to determine their reasonableness pursuant to § 329 of the Bankruptcy Code.

Section 330 of the Code sets out the standards by which courts should determine the reasonableness of fees under § 329; reasonableness is determined by looking at the nature, extent, and value of the services rendered. See In re Eliapo, 298 B.R. 392, 401 (9th Cir. BAP 2003). Section 330(a)(3) of the Code states that in determining the amount of reasonable compensation, the court should consider the nature, extent, and value of the services performed, taking account of all relevant factors, including the time spent on the services, the rates charged, and the customary compensation of comparably skilled attorneys in other cases.

Reviewing fee applications on a line-by-line basis is an undesirable task. However, in cases such as this, where requested fees for a portion of a chapter 13 case exceed the "no-look" fee applicable at the time the case was filed by such a

significant amount ($4,518 versus $3,500), especially where, as here, Counsel did not commence the case or prepare the schedules, statements, or original plan, or obtain confirmation of the original plan, the court must take a close look at the fees charged to determine their reasonableness, regardless as to how desirable the task may be.

The court finds that Counsel's hourly rate, $250, is reasonable, and the court does not have an issue with the quality of Counsel's services. With that said, the court does have concern over whether the amount of time charged for specific tasks is reasonable. To begin with, Counsel's services have been billed in increments of quarters of an hour rather than tenths of an hour, as is customary for attorneys practicing in this court, and as was required by the court's former Guidelines for Compensation and Expense Reimbursement of Professionals. See In re Pedersen, 229 B.R. 445, 449 (Bankr. E.D. Cal. 1999). Counsel's use of the quarter-of-an-hour increment with 0.25 as the minimum makes it difficult for the court to find that all services were billed at the actual amount of time spent. It also appears that the time charged for certain services was excessive. For example, to prepare a three-sentence standard form substitution of attorneys, Counsel billed one hour of attorney time, or $250. To prepare an amended Rights & Responsibilities, which is a standard form with only two figures filled in, Counsel billed one-half hour of attorney time, or $125. To review the trustee's opposition to a motion to modify plan, advising that the proposed plan payment was insufficient by $19 to make the plan feasible, Counsel billed one-half hour of attorney time, or $125. And to prepare a one-sentence order confirming a modified plan, Counsel billed one-half hour of attorney time, or $125.

Counsel also billed exactly one hour of attorney time for each of two court appearances, and exactly two hours of attorney time for preparing each of two motions to modify a plan and for this fee application. That each of these tasks took exactly the same amount of time, each in one-hour increments, appears unlikely.

The court is also concerned that Counsel has billed for legal assistants' time, at $75 per hour, for services that appear to be secretarial in nature, which are, therefore, not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). For example, on several occasions, Counsel billed for its legal assistants' time spent filing and serving motions. In each instance, the legal assistant "lumped" the time spent on that task with time spent preparing supporting documents and meeting with the debtor; the court is unable to segregate the non-compensable time. Further, in each instance, the legal assistant did not identify what supporting documents he or she prepared, and there is no indication his or her meeting with the client was for anything more than simply obtaining the client's signature on a declaration. Finally, a legal assistant billed on two occasions, at one-half hour each, for an "Email from and to client re Notice of Default," whereas there is no evidence this consisted of anything other than receiving the client's e-mail advising that the trustee had issued a Notice of Default and confirming receipt.

For the reasons stated, the court finds that the amounts billed for the legal assistants' time for the services described above was not reasonable, and will reduce the fee request by the total billed, $506.25.[1] The court also finds that the time spent preparing the substitution of attorneys and Rights & Responsibilities was secretarial in nature, and will reduce the fee request by the amounts billed, a total of $375, and that the time spent preparing the order confirming the modified plan and reviewing the trustee's simple opposition, as described above, was excessive, and will reduce the fee request by one-half of the amounts billed for

those services, $125.[2] The court will not reduce the request for the time billed for the three motions at exactly two hours each, although the court would caution Counsel that the lack of any variance in the billings suggests Counsel billed a fixed amount for each motion rather than keeping records of the specific amounts of time spent.

Reducing the fee request, $1,568.75, by these amounts, a total of $1,006.25, would bring the request down to $562.50. The court will hear the matter.

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1 This is the total amount billed for the legal assistants' services on 4/27/10, 9/7/10 (two entries), 3/8/12, 7/9/12, 1/29/13, and 12/16/13.

2 This equals one-half of the amounts billed for the described entries on 5/25/10 and 6/26/10.

31.	13-91499-D-13 BSH-5	HARVEY FISH	MOTION TO CONFIRM PLAN 12-10-13 [64]

32.	14-90001-D-13 LOB-1	LENA BAKER	MOTION TO EXTEND AUTOMATIC STAY 1-14-14 [10]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to extend the automatic stay, pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The court will hear the matter; however, for the guidance of the parties, the court issues this tentative ruling.

First, the notice of hearing did not comply with the court's local rules. The moving party gave only 14 days' notice of the motion; thus, the moving party was required to advise potential respondents in the notice of hearing that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). Instead, the notice of hearing stated that those not wanting the court to extend the stay or wanting the court to consider their views should appear at the hearing. However, the notice also stated, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . ." Notice of Hearing, filed Jan. 14, 2014, at 2:1-3. These steps are not required by the local rules for a motion brought under LBR 9014-1(f)(2). These directions may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

However, even if notice had been appropriate, the court would have additional concerns. A case is presumptively filed not in good faith if "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case . . . or any other reason to conclude that the later case will be concluded . . . with a confirmed plan that will be fully performed . . . ." § 362(c)(3)(C)(i)(III)(bb). The presumption may be rebutted by clear and convincing evidence to the contrary. § 362(c)(3)(C).

The debtor lives in a skilled nursing facility; the petition was filed by her court-appointed conservator. He has presented no evidence in support of the motion, only a memorandum/brief, which recites a variety of complaints about the alleged efforts of the probate examiner for the probate court handling the probate estate of the debtor's deceased husband to "scuttle the Probate Case" and to "sabotage, undermine and subvert the conservatorship of [the debtor] . . . ." Memo., filed Jan. 14, 2014 ("Memo"), at 4:5-6. The conservator also complains that the chapter 13 trustee's office in the prior case would not discuss particular objections with the conservator's counsel. These issues are not pertinent to this motion, and will not be considered. As far as the relevant issues are concerned, the conservator simply states his conclusion that there is no presumption of bad faith here because the prior case was dismissed "based on arguments and allegations by the trustee that are not supported by the facts, evidence or the law." Memo at 7:13-14. Thus, in his view:

> This case is an administrative anomaly that has been refiled because it never should have been dismissed in the first place. The debtor should be entitled to go through the bankruptcy process so that the she can reorganize her finances in a procedural environment that will not be subject [to] the immediate loss of assets and the procedural chaos that will ensue if the automatic stay is allowed to expire.

Id. at 7:20-24. This argument represents a serious lack of appreciation of the several serious flaws in the prior case, which are reiterated in the court's tentative ruling on the debtor's motion to vacate the order dismissing that case, Item 44 on this calendar.

For purposes of this motion, however, the moving party has failed to submit any evidence whatsoever; let alone evidence that there has been a change in the financial or personal affairs of the debtor since the dismissal of the last case or that there is any reason in this new case to determine that it will be concluded with a confirmed plan that will be fully performed. The debtor's Schedule I shows income consisting of $1,183 from social security and a small pension plus $1,250 from a rental property, for a total of $2,433. Her Schedule J shows a "rent or home ownership expense" of $1,164, with no other expenses – nothing for food, clothing, medical expenses, transportation, or anything else. The explanation, at the bottom of Schedule I, is this:

> Debtor is in a skilled nursing facility and these expenses other than mortgage are -0- which would make the expenses 1164.20 [the mortgage payment]. This creates a net income of $1,202.00. Other expenses include fees to be paid to conservator by operation of law. Any funds that are not spent on the maintenance of the estate, the well being of conservatee [the debtor] or is not spent on medication & treatment not covered by medicare or medi-cal as required by law will be spent on priority & administrative claims of the estate.

This appears to be an acknowledgment that the debtor will have living expenses that are not accounted for in the budget – at the very least, co-pays for medical care and prescriptions, if not for clothing and other personal items. However, even assuming no such expenses; that is, no expenses at all except the mortgage payment on the rental property, the debtor would have only $1,269 per month in monthly net income ($2,433 - $1,164). From this, the plan proposes a payment of $522 per month toward pre-petition arrearages on the mortgage on the rental property, which reduces the debtor's balance to $747. In order for the court to find that the plan is feasible; that is, to find that this case will be concluded with a confirmed plan that will be fully performed, the debtor's conservator would need, at a minimum, to demonstrate, by clear and convincing evidence, that the amount charged by the skilled nursing facility for the debtor's care, room, and board, plus all expenses of the debtor, including some reasonable amounts for clothing, personal items, and recreation, will be paid from government sources and the $747 in monthly net income. No such showing has been made. The debtor's schedules and statements do not mention any funding from sources such as Medi-Cal or anything else from which the court might conclude the debtor's living expenses are affordable for her.

Further, the court questions whether this case has been filed for the benefit of the debtor or someone else. As indicated, the debtor is residing in a skilled nursing facility where, if the conservator's schedules are to be believed, she has few, if any, expenses. Her social security income is $1,116 per month (plus a $67 payment from a pension which, however, is listed in the joint debtor's column on Schedule I, although there is no joint debtor in this case). This social security income is more than the debtor will have left after payment of the ongoing mortgage and arrears payments on her rental property, $747, as calculated above. The court wonders why the rental property, which according to the schedules, is overencumbered (value $143,100 versus first mortgage of $196,037), is at all necessary for the debtor. It appears she has no other assets that would be reachable by creditors; thus, the court is unable, from the record as it presently stands, to determine that this chapter 13 case, as opposed to a chapter 7 case, has been filed in good faith.

Finally, the court notes that the debtor's Form 22C shows no income from any source in the past six months, although income from rental property was clearly required to be listed. This leaves the court to speculate about the conservator's ability to bring in $1,250 per month in rental income, beginning immediately.

Simply put, for the automatic stay to be extended under § 362(c)(3)(B), it is the debtor's burden to rebutt the presumption that the case has not been filed in good faith by clear and convincing evidence and this motion is supported by no evidence at all. For this, and all the reasons stated, the motion will be denied by minute order. No appearance is necessary.

33. 14-90002-D-13 GREGORY SCOTT — MOTION TO IMPOSE AUTOMATIC STAY
DCJ-1 — 1-14-14 [9]

34. 13-92003-D-13 MICHAEL/MONICA ALLEN
RDG-2

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
1-6-14 [21]

35. 13-92205-D-13 RON PANIAN
DAVID GEORGE VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-14 [19]

Final ruling:

The motion is denied for the following reasons: (1) moving party's proof of service fails to comply with Local Bankruptcy Rules in that does not contain the caption of the case and the name of the person signing the proof of service (see LBR 9014-1(e)(3)); (2) moving party has failed to include an appropriate docket control number (see LBR 9014-1(c)); (3) moving party failed to serve the Chapter 13 trustee at his address of record; and (4) moving party gave less than 14 days' notice of the motion and did not obtain an order shortening time (see LBR 9014-1(f)(3)). For these reasons the court will deny the motion by minute order. No appearance is necessary.

36. 13-92131-D-13 JUAN FELIX MARTINEZ
EDC-1
LEONEL GUTIERREZ, ET AL. VS.

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-14 [26]

37. 13-90936-D-13 LUZ FELIX
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-24-13 [24]

CASE DISMISSED 6/3/13

38.	13-92043-D-13 JDP-2	FLORIN/CORNELIA BOARU	CONTINUED MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 11-26-13 [16]

39.	13-91745-D-13 TOG-1	DOMINGO RODRIGUEZ AND VIRGINIA LOPEZ	CONTINUED MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 10-11-13 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at $0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. The creditor's opposition to the motion has been withdrawn, and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

40.	13-92052-D-13 RDG-2	RALPH KLAUSER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 1-10-14 [30]

Final ruling:

The objection will be overruled as moot. The debtor filed an amended plan on January 15, 2014, making this objection moot. As a result the court will overrule the objection without prejudice by minute order. No appearance is necessary.

41.	13-91563-D-13 BPC-1	CONNIE CAMPBELL	CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 10-11-13 [15]

Tentative ruling:

This is the debtor's motion to value collateral of JPMorgan Chase Bank (the "Bank"); namely, a second position deed of trust against the debtor's residence, at $0. The Bank filed opposition to the motion, and the hearing was continued to allow the Bank to submit evidence, which it has done. For the following reasons, the motion will be denied.

One procedural matter first. The continued hearing on this matter was set for January 14, 2014. The court by final ruling and without appearances continued the hearing to this date, January 28, 2014. The court did not reopen the evidentiary record, which had closed, or permit the parties to file anything further. Nevertheless, on January 21, 2014, the debtor filed a reply to the declaration of Denis A. Desaix, which the Bank had filed on December 18, 2013. Because the reply was filed after the record had closed, and because the court did not permit additional filings when it continued the hearing from January 14, 2014, the court will not consider the reply.

There is a deed of trust on the property that is senior to Bank's deed of trust – the senior lien secures a claim in the amount of $136,199.89.[1] Thus, if the value of the property is more than $136,200, the debtor may not value the Bank's claim under § 506(a) of the Bankruptcy Code. The debtor's evidence of value consists of a declaration of and appraisal by A. Dirk Hoek, who values the property at $120,000 as of May 31, 2013. The Bank's evidence consists of a declaration of and appraisal by Denis A. Desaix, who values the property at $158,000 as of the petition date, August 26, 2013.[2]

Thus, the range of values is between $120,000 (the debtor's value) and $158,000 (the Bank's value); the critical question is whether the value exceeds $136,200. Mr. Hoek's appraisal was performed first – at the end of May, almost three months before the debtor filed her petition, on August 26, 2013.[3] Thus, Mr. Hoek relied on earlier comparable sales than Mr. Desaix. In fact, three of Mr. Hoek's comparables are sales that occurred in January of 2013, four months before the effective date of his valuation and seven months before the petition date in this case. Mr. Hoek acknowledged in his appraisal that "there is evidence that values have increased since the first of the year," and he adjusted each of those three comparables upward by $4,000 to account for that factor. Mr. Hoek's three other comparables sold in March and April of 2013, still over four months prior to the petition date.

Two of Mr. Desaix's comparables sold in March of 2013, one in June, and one in July. The latter two are the closest in time of all the comparables – Mr. Hoek's and Mr. Desaix's – to the petition date. For the two sold in March, Mr. Desaix adjusted them upward by 12% each to account for increases in property values in the next four months. He also included one comparable twice – once when it was sold in a short sale, on March 25, 2013, and then when it was sold as an "investor flip" on July 5, 2013.[4] The property sold in March for $137,500, which Mr. Desaix adjusted upward by $20,500 to account for the rising market between then and August 26. After significant renovations, described by Mr. Desaix, it sold in July for $190,000, which Mr. Desaix adjusted downward by $35,000 to account for the then average condition of the property, as compared with the below-average condition of the debtor's property. Mr. Desaix arrived at adjusted values of $158,000 and $155,000 for those two sales. He explains that he gave the most weight to his Comparable #3 (the short sale that closed March 25, 2013), because it "mostly closely matches the subject's as-is condition." He states he included the July 5, 2013 re-sale "to demonstrate the subject's appeal to an investor who would purchase, renovate/repair, and re-sell."

There are significant differences in the adjustments made by Mr. Hoek and Mr. Desaix to the comparable used by both of them, the property on Nanette Drive in Salida, one-tenth of a mile from the debtor's, which sold on March 27, 2013 for $115,000. Mr. Desaix adjusted the price upward $17,500 to account for the market increase in the five months leading up to the petition date and upward $25,000 to account for the poor condition of the comparable property, as compared with the

below-average condition of the debtor's property. Mr. Hoek, on the other hand, found the comparable and the debtor's property both to be in fair condition. Mr. Desaix, however, spoke with a real estate agent involved in the sale of the comparable, who described it as in "deplorable condition," with significant work to be done to make it habitable. Mr. Desaix inspected the debtor's property, interior and exterior, noted significant deferred maintenance, and spoke with the debtor about the condition of the property, including the various items she contends need repair. He concluded the property is in below-average condition, but habitable.

In conclusion, both Mr. Hoek and Mr. Desaix used comparables close in location and age to the debtor's. However, Mr. Desaix used comparables closer in time to the date of the debtor's petition, in a rising market; thus, the court gives greater weight to his appraisal. On that basis, and although the actual value of the property may fall somewhere in between $120,000 and $158,000, that the value of the property is significantly in excess of $136,200, and the motion will be denied.

The court will hear the matter.

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1 The debtor's motion uses the figure $135,994; the senior lienholder's proof of claim uses the slightly higher figure, $136,199.89.

2 In her reply to the Bank's original opposition, the debtor objected to the Bank's broker's price opinion on several grounds, including that it used post-petition sales as comparables; she also contended the appropriate date for valuation of property is the petition date. This may or may not be correct (see below). In any event, however, Mr. Desaix evaluated the property retroactively to the petition date, and explained in significant detail in his appraisal how he accomplished this.

(The debtor's counsel cited § 522 of the Bankruptcy Code for the proposition that the petition date is the applicable date for the valuation of property; however, § 522 concerns a debtor's exemptions and motions to avoid liens that impair those exemptions. As to motions to value collateral under § 506(a), current case law goes both ways. Some courts find the petition date to be the applicable date (see, e.g., In re Gutierrez, 2013 Bankr. LEXIS 5035 *14-15 (Bankr. C.D. Cal. Nov. 27, 2013)); others find the confirmation date to be appropriate (see, e.g., In re Dheming, 2013 Bankr. LEXIS 1166 *8-9 (Bankr. N.D. Cal. March 22, 2013)). This issue was not briefed by either party.)

3 The debtor delayed another six weeks before filing this motion, and when she finally did so, she supported it with a hearsay copy of Mr. Hoek's appraisal. She did not file a declaration of Mr. Hoek until after the Bank filed its initial opposition to the motion.

4 Four of Mr. Hoek's comparables were short sales; the fifth was a HUD foreclosure sold in "as-is" condition, and the sixth was deeded to the lender in lieu of foreclosure and then sold to the County Housing Authority under the neighborhood stabilization program. Three of Mr. Desaix's comparables were short sales; the fourth was the investor flip just mentioned.

42. 13-91563-D-13 CONNIE CAMPBELL
RCO-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
10-22-13 [22]

Tentative ruling:

This is the objection of JPMorgan Chase Bank (the "Bank") to confirmation of the debtor's chapter 13 plan. The Bank objects that the plan proposes to value its claim, secured by a second position deed of trust against the debtor's residence, at $0, whereas the Bank contends there is some equity in the property to secure the Bank's claim. The court has now determined the Bank is correct on that point (see Item 41 on this calendar); thus, the Bank's objection to confirmation will be sustained.

The court will hear the matter.

43. 13-91975-D-13 ANDRES/IRMA SEPULVEDA
RDG-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
12-20-13 [28]

44. 13-90282-D-13 LENA BAKER
LOB-2

MOTION TO AMEND
1-14-14 [109]

CASE DISMISSED 11/20/13

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to reconsider and vacate the court's November 20, 2013 order dismissing this case. The court will hear the matter; however, for the guidance of the parties, the court issues this tentative ruling.

First, the notice of hearing did not comply with the court's local rules. The moving party gave only 14 days' notice of the hearing; thus, the moving party was required to advise potential respondents in the notice of hearing that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). Instead, the notice of hearing stated that those not wanting the court to vacate the dismissal order or wanting the court to consider their views should appear at the hearing. However, the notice also stated, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on

this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . ." Notice of Hearing, filed Jan. 14, 2014, at 2:1-3. These steps are not required by the local rules for a motion brought under LBR 9014-1(f)(2). These directions may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

Second, there is insufficient evidence of service on file. On December 5, 2013, the moving party's counsel filed a proof of service stating he had served the notice, motion, supporting declaration, and proof of service "to the Trustee's Office by Fax." Neither the trustee's name nor the fax number is given; thus, the court cannot determine whether service was proper. Further, the moving party failed to serve any of the creditors in the case, despite the fact that their interests would clearly be impacted by an order vacating the dismissal. On January 14, 2014, having been notified by the clerk's office (on or about December 6, 2013) that the hearing date he had selected was not available, the debtor's counsel filed an amended motion and amended notice, along with a proof of service stating that those documents were served by mail on January 14, 2014. The proof of service does not indicate the parties served or the addresses at which they were served.

However, even if service and notice had been appropriate, the court would deny the motion. Some background is in order to demonstrate that even if the debtor is correct about the specific substantive issue raised in the motion, the case was properly dismissed for unreasonable delay. This case was commenced on February 15, 2013; however, a proposed chapter 13 plan was not filed until March 15, 2013. Thus, the summary procedure for confirmation was not available to the debtor (LBR 3015-1(c)), and she was required to proceed by filing a motion to confirm the plan. LBR 3015-1(d). She waited over three months – until June 24 (after the trustee had filed the second of what would be four motions to dismiss, all citing, among other things, unreasonable delay), when she filed an amended plan and a motion to confirm it, which was set for hearing on August 13, 2013. The trustee filed opposition on six different grounds, including that an amended petition had been filed adding Lamar Baker as a debtor, although he was deceased at the time the original petition was filed. The trustee added that the probate estate of Lamar Baker likely contained community property assets, and that the trustee could not determine whether those were properly accounted for in the debtor's bankruptcy schedules. The trustee also noted that the debtor's statement of financial affairs mentioned neither the probate proceeding of the estate of Lamar Baker nor the pre-petition conservatorship proceeding of which the debtor herself was the subject.

The debtor did not file a reply to the trustee's opposition, and the court issued a final ruling denying the motion on five procedural grounds (including lack of a proof of service) and two others – (1) that the plan named the debtors as Lena Mae Baker (the debtor) and Lamar Baker, who was the debtor's husband and who, at the time this case was commenced, was deceased; and (2) that the petition had been signed by the debtor herself, whereas it appeared a state court conservator had been appointed for her five months before the petition was filed. The order denying the motion was issued August 17, 2013.

The debtor did nothing until after the trustee filed his fourth motion to dismiss the case for, among other things, unreasonable delay. On September 23, 2013 (the day before the hearing on the trustee's motion), the debtor filed a second amended plan and a motion to confirm it. The second amended plan, like the first one, included both the debtor and Lamar Baker as plan proponents. The motion mentioned only the procedural problems raised in the court's ruling on her first motion, and said nothing at all about the questions the court had raised in its

first ruling – whether a deceased person may be a debtor in a bankruptcy case commenced after he has died; whether a joint debtor may be added to a case simply by the filing of an amended petition; or whether the debtor had the authority to commence the case in the first place, when there was in place at that time a state-court appointed conservator of her person and estate.

The trustee opposed the motion, raising again the argument that Lamar Baker was not properly named as a debtor and that his probate estate might well contain assets of a community property nature that should have been accounted for in the debtor's bankruptcy schedules; the trustee also again raised feasibility and other issues. The debtor's attorney, in violation of the local rule (LBR 9014-1(f)(1)(C)), filed a 10-page rebuttal to the trustee's opposition and a 6-page memorandum of points and authorities the day of the hearing, after the court had issued a tentative ruling. In those documents, the debtor's attorney complained at length about the probate examiner and the chapter 13 trustee's office, blaming the latter for refusing to communicate with him except in court. He included long and detailed citations to probate law, the interaction between probate law and bankruptcy law, the joinder of real parties in interest or the substitution of parties holding legal title to the beneficial interest of the debtor in property (in reference to his attempt to add the deceased Lamar Baker as a debtor), and the effect of this bankruptcy case on Lamar Baker's creditors. He concluded by asking this court to help him answer the question "how can the bankruptcy process be used to aggregate the property rights in this case and determine the extent of the claims on the property when the probate process has been derailed by a probate examiner who has overstepped their legal authority?" Memo., filed Nov. 19, 2013, at 5:23-25.

Following the hearing, the court adopted its tentative ruling as its final ruling, and denied the motion to confirm the second amended plan. Even if the court had had sufficient time to review the debtor's belated rebuttal and points and authorities, the outcome would have been the same, if for no other reason than that the debtor had failed to address the questions (1) whether she had the authority to file the petition in the first place, thus causing all her assets to become property of her bankruptcy estate, given that there was a conservator of her person and estate in place at the time, who did not sign the petition; and (2) whether the post-petition filing of an amended petition signed by her conservator was sufficient to correct retroactively a petition that was ineffective to commence a bankruptcy case due to lack of authority on the part of the person signing it. (The court is also convinced the adding of Lamar Baker as a debtor was not the appropriate method to bring the property interests Lena Baker acquired at his death into her bankruptcy estate, and it is not the court's or the trustee's job to keep track of the attempted addition and subtraction of parties as, for example, by correcting the misjoinder of the parties by removing Lamar Baker as a debtor "as if the attempt to join the parties had never happened," as the debtor suggested. Rebuttal at 9:5.)

The trustee's motion to dismiss (his fourth in the case) was brought for unreasonable delay and cause consisting of the failure to confirm a plan. It was heard September 24, 2013, and was denied conditioned on the debtor confirming a plan by November 19, 2013 (the date on which the debtor's second amended plan had been set for hearing). The order provided that if the debtor failed to meet that condition, the trustee might, by declaration, set forth such failure and submit an order dismissing the case without further notice. Although aware of that order, the debtor's attorney failed to file a timely reply to the trustee's opposition to his motion, waiting to do so until the day of the hearing. When the motion was denied, the trustee's office submitted a declaration stating that the required condition had not been met, and the case was dismissed.

The court finds these circumstances to have been sufficient grounds for dismissing the case for unreasonable delay that was prejudicial to creditors. The court will, however, examine the new ground raised by this motion. The debtor cites In re Myers, 350 B.R. 760 (Bankr. N.D. Ohio 2006), and the cases cited therein, for the proposition that there is no requirement that a person be mentally competent in order to seek relief under the Bankruptcy Code. Myers, 350 B.R. at 763. The debtor concludes:

> **Unfortunately this court is creating a requirement on the debtor to commence the bankruptcy case that is not present in the bankruptcy code or supported by case law. By creating this requirement the court is redefining who can be a debtor which effectively denies Lena Baker access to the protection of the bankruptcy code; a right that is protected by the Constitution. As such using the rational to dismiss the case because the case was improperly commenced was an error that should [be] reversed.**

Amended Motion, filed Jan. 14, 2014, at 3:5-9. The court's ruling on the debtor's motion to confirm her second amended plan did state that "apparently, she was incompetent" to sign the petition commencing the case. To that extent, perhaps, the court was wrong. However, the ruling also questioned whether, a conservator having previously been appointed over her person and her estate, the debtor had the authority to cause her assets to be put into a bankruptcy estate. The present motion does not address this issue.

Further, these questions both go to the court's ruling on the debtor's motion to confirm her plan, not to the trustee's motion to dismiss the case or the court's conditional order on that motion or the ultimate order dismissing the case. For the reasons discussed above, the court concludes that the debtor's failure to timely prosecute the case caused unreasonable delay that was prejudicial to creditors; there is no basis shown to vacate the dismissal order. For the reasons stated the motion will be denied by minute order. No appearance is necessary.

45.	12-91593-D-13 CJY-5	KENNY/PAULA BELL	MOTION TO SELL 1-6-14 [51]

46.	13-91995-D-13 RDG-1	MIGUEL/GLORIA VARGAS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 1-6-14 [16]