UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 28, 2014 at 3:00 p.m.

---

1. 13-20900-E-13 SCOTT/LISA MACUMBER — MOTION TO MODIFY PLAN
RAC-3 Richard Chan — 12-23-13 [38]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2013. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

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

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 23, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2.	**13-32601-E-13 DJC-1**	**BRIAN ZIELKE AND AMANDA HILL Diana J. Cavanaugh**	**OBJECTION TO CLAIM OF STERLING JEWELERS, CLAIM NUMBER 4 12-7-13 [37]**

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 7, 2013. By the court's calculation, 52 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 4 of Sterling Jewelers. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 4 on the court's official claims registry, asserts $4,257.81 secured claim. The Debtor objects to the Proof of Claim on the basis that prior to the filing of this bankruptcy, Debtors sold the collateral for this claim and listed the subject debt as an unsecured debt in their petition. Debtors object to this claim being a secured claim as they were not longer in possession of the collateral for this claim at the commencement of this case.

OPPOSITION

Sterling Jewelry, Inc. dba Jared The Galleria of Jewelry ("Creditor") opposes the objection to claim filed by Debtors on the basis

that Debtors sold the subject jewelry to an individual unknown to Creditor and is an individual with whom Secured Creditor has no contractual agreement and has little or no information regarding. Creditor argues that in light of the fact that its secured property is in the possession of a third party with whom no contractual relationship has been made and about whom Creditor has no information, Secured Creditor believes that Debtors have converted its secured collateral by selling the same to unknown third persons without Creditor's authorization. Creditor contends that at all times relevant hereto, Secured Creditor is entitled to be holder and owner of a secured claim hereunder in the amount of $4,257.81.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The Court addressed this very issue at the hearing on the Objection to Confirmation of Plan filed by Creditor. The court noted,

> The Objection to Creditor raises significant issues concerning the Chapter 13 Plan, the treatment of its claim, the good faith of these Debtors, and the accuracy of their statements under penalty of perjury. First, the Debtors purchased fairly expensive jewelry, in light of their very limited income, and then immediately disposed of it to an unknown stranger. The court realizes that people or businesses pushed to their financial limits may well do desperate things to survive. This may well include saying whatever they think helps them get though the day (such as an intention to pay for jewelry purchased, that the jewelry was sold to an unknown person, the assets they have, and their income).
>
> As discussed above, this Creditor appears to have known when it sold the jewelry that these Debtors had no ability to repay the obligation, and were likely to do something desperate with it to survive. No information is provided as to the income and expense information given to Creditor by Debtors. Creditor offers no declarations and does not authenticate the exhibits filed with the court. However, it has filed a proof of claim in the amount of $4,257.81. Proof of Claim No. 4-1. This is prima facie evidence of this debt. If this debt was amortized over five years at 24.99% interest, the Debtors would be required to make monthly payments of $124.92 and pay $3,238.42 of interest over that

> short time. (The court computed the loan payment schedule using the Microsoft Excel Simple Loan Calculator program.)
>
> In looking at the receipts attached to the Proof of Claim, the court notes that (1) the engagement ring is listed as having a retail and sales price of $1,199.99, (2) an additional $139.99 of the debt is for a guarantee, (3) the wedding ring is listed as having a retail and sales price of $1,299.99, (4) an additional $139.99 of the debt appears to be for a guarantee of the wedding ring, (5) a Movaldo watch is listed as having a retail and sales price of $395.00, (6) an additional $14.99 is charged for lifetime battery warranty, (7) $495.00 is listed as the retail and sales price for a Movaldo Watch, and (8) an additional $14.99 is charged for a lifetime battery warranty.
>
> At this juncture, the court is stuck between the Debtors who have disposed of the creditors collateral to an unknown stranger without any documentation, a month after they purchased the jewelry, and the Creditor who appears to have known that the Debtors had no ability to pay for the jewelry, guarantees, and lifetime battery warranties that were sold.

Civil Minutes, Dckt. 43. The court continued the hearing to February 11, 2014.

The court also notes that Creditor has filed a Complaint to Determine Dischargeability of Debt (Adversary Proceeding No. 13-2395) stating that Defendant-Debtor converted its secured collateral by selling the same to unknown third parties without Plaintiff's authorization. Adv. Proc. No. 13-02395, Complaint, Dckt. 1.

Here, Debtors provide no legal authority to object to Creditor's claim. Debtors cite no statute, case law, secondary legal source or otherwise for the contention that Creditor does not have a secured claim because they sold the property prepetition. The court declines to offer its services as law clerk or associate attorney and provide the requisite research for either party. The Debtor being the moving party with the burden to provide sufficient argument and evidence to seek their requested relief, the court overrules the objection without prejudice. The court accepts as presented that there is no law which supports the objection to claim.

Further, from the arguments and evidence presented, there is no dispute that this creditor's claim is "secured." The Debtor just contend that the collateral is in the hands of some unidentified party. How that secured claim is treated in this bankruptcy case is an issue for confirmation, not the court entering an order incorrectly stating that the creditor does not have a secured claim. The value of the secured portion of the claim for purposes of any plan in this case possibly may be the subject of a determination by the court under 11 U.S.C. § 506(a) or some other provision of the Bankruptcy Code.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Sterling Jewelry, Inc. dba Jared The Galleria of Jewelry filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 4 of Sterling Jewelry, Inc. dba Jared The Galleria of Jewelry is overruled.

3. 13-33601-E-13 ANA RODRIGUEZ
TSB-1 Peter Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
11-26-13 [22]

CONT. FROM 12-17-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 26, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor reports on Schedule I gross income of $2,922.72 and net income of $2,255.87 from employment at Sutter Health. Trustee states the paystubs provided by Debtor for the 6 months prior to filing, show that the Debtor's average gross income totals $3,226.74, the deductions average $1,307.98 and her net income averages $1,918.76. Trustee contends Debtor's net income is $337.11 less than reported on Schedule I.

Trustee also states that on Schedule J, Debtor's expenses reported for a household of 4 is tight, listing only $175.33 for electricity/heat, $80 for water/sewer, no expense listed for home telephone or cell phone, no expense for cable television, no expense for internet service, $2 for home maintenance, $375 for food, no expense for any additional personal care, $15 for clothing, $35 for dry cleaning, no expense for laundry/dry cleaning, and recreation of $6. Trustee states Debtor does not have any flexibility in her budget to allow for the difference in income reported on Schedule I.

The Trustee also states that the plan may not be the Debtor's best effort, as Debtor is below median income and proposes a 60 month plan paying $1,280 per month with a dividend of no less than 0% to general unsecured claims.

Additionally, the Trustee states Debtor received $3,755 from the IRS as a tax refund for 2012 and $1,036 from FTB as a tax refund for 2012. Combined these figures total $4,791 which averages $399.25 if spread out over 12 months. Trustee states Debtor also received tax refunds for 2011. She received $567 from Franchise Tax Board and $4,817 from the IRS. It appears that tax returns are a historical pattern and can be relied on as a source of income to support the plan.

Lastly, the Trustee states at the 341 meeting, Debtor admitted that her mother lives in the residence and receives social security income. Trustee states it was implied that mother is available and willing to assist the Debtor with household expenses and that is why there is no expense reported for certain utilities and household expenses.

CONTINUANCE

The court continued the hearing on the Objection to allow Debtor to file and serve opposition and for the Trustee to respond.

OPPOSITION

Debtor filed an opposition and amended Schedules, stating that she testified at the meeting of creditors that her mother resides at her residence and receives social security. Debtor states that she does not charge her mother rent but she sustains herself on her own funds. Debtor states she does pay for certain monthly expenses such as water, sewer, SMUD, PG&E, and City and County utilities.

TRUSTEE'S RESPONSE

The Trustee states that Amended Schedule I increases the overtime pay to $1,408.18 from $1 08.33; Debtor's income net from $2,255.87 to $3,318.84. It also indicates debtor adjusted to prevent large refunds, but does not indicate when it was adjusted and whether a refund for 2013 is anticipated.

The Trustee also states that Debtor's Amended Schedule J, increases food from $375 to $1000, clothing from $15 to $200, transportation from $160 to $400, recreation from $6 to $53. Debtor also indicates in her declaration that her mother, who resides with her, pays some of the household expenses, including water, sewer, SMUD, PG&E, and city and county utilities -unfortunately no specific declaration has been given as to what expenses are paid, and no declaration has been given by the Debtor's mother as to what she is paying and will continued to paid.

The Trustee also objects that the Debtor has not provided a declaration as to the Amended I & J and Form 22C. The Trustee's original objection indicated that according to paystubs (Court docket #26), the Debtor's gross income totaled $3,226.74. Trustee argues that Debtor now reports gross income of $4,165.74 and that a change in withholdings would create a greater net income but would have no effect on the gross wages.

DEBTOR'S REPLY

Debtor states that her ability to make plan payments as proposed are based on the debtor's ability to obtain overtime, and that when she is unable to obtain overtime, the expenses must be reduced, but are still reasonable and necessary.

DISCUSSION

Based on a review of the Debtor's plan and amended schedules, it does not appear she will be able to make regular payments required under 11 U.S.C. § 1325(a)(6). The supplemental evidence presented does not explain the increase in income and the changes in expenses. No declaration or other evidence has been presented that Debtor's mother is able and willing to contribute to the household expenses.

The Debtor's "flexible" testimony under penalty of perjury as shown in amending her Schedules I and J casts a cloud over her credibility and any testimony she seeks to provide in this case. Quite carefully the Debtor has avoided providing any testimony with her Reply – leaving it only for her counsel to argue such "facts." Dckt. 40. The court is left without credible testimony as to how this Debtor states under penalty of perjury that here monthly expenses are limited to $975.87, which substantially consist of $375.00 for food, $2.00 for home maintenance, $160.00 for transportation, $0.00 for medical and dental expenses, $6.00 for recreation, and $127.54 on Original Schedule J. Dckt. 1 at 31.

Then, when caught by the Trustee, Debtor changes her statements under penalty of perjury to say that her expenses a month are "really" $2,038.84. This more than 100% increase includes: $1,000.00 for food and supplies, $200.00 for clothing and laundry, $400.00 for transportation, $53.00 for entertainment. Amended Schedule J, Dckt. 34.

In her supplemental declaration filed earlier, Dckt. 35, the Debtor merely states that she provides a free residence to her Mother. Further, the Debtor generally states that her Mother pays some expenses, but no specific dollar amounts are provided. No information is provided concerning the Debtor's Mother's income, other than the Debtor "testifying" that the Mother receives Social Security. No testimony is provided by the Mother as to her actual income, assets, and the reason why she is receiving free room, and quite possibly food and other living expenses.

The Debtor's proposed Chapter 13 Plan (Dckt. 5) is based on the Debtor making a $1,280.00 a month plan payment. Of this, the Trustee is to disburse $1,050.00 a month adequate protection payments to Wells Fargo Bank, N.A. for its secured claim, pending a determination on a loan modification. Other than making these adequate protection payments and hopefully obtaining a loan modification, paying her attorney, and paying the Chapter 13 Trustee fees, no provision is made for paying any other claims or restructuring the Debtor's finances.

Original Schedule J demonstrates that the Debtor has $1,280.00 a month in Net Monthly Income. Dckt. 1 at 31. Debtor generates this amount by subtracting her ($975.00) in monthly expenses from her $2,255.87 in monthly income. In what Debtor may characterize as a "convenient coincidence," when caught by the Trustee with unrealistic expenses, the Debtor's new found income yields $3,318.84 in income, which is just enough, after deducting her increased expenses of ($2,038.84), amended Net Monthly Income of exactly $1,280.00 – precisely the same amount to fund her existing plan. Amended Schedules I and J, Dckt. 34.

While the Debtor may find this to be a "convenient coincidence," the court concludes that these are concocted numbers by the Debtor, created solely to mislead the court and creditors. The Debtor's switching of statements under penalty of perjury and failing to provide testimony of changed circumstances to warrant such substantial changes in income (42.5% increase in gross income) and expenses (109% increase in expenses) causes the court to conclude that her testimony is not truthful or credible. Further, the Debtor hides the income and assets of her Mother which may be reasonably used to pay her portion of expenses, room, and board.

Debtor having burned her credibility in this case, Debtor and Counsel may well need to determine what, if anything, may be done to try and prosecute this, or any subsequent, bankruptcy case in good faith. It may be necessary for counsel, in light of the conflicting statements made under penalty of perjury filed for this Debtor, to engage the services of a credible, independent third-party forensic accountant who can build an accurate history of the Debtor's income and expenses, and present credible testimony of Debtor's finances to be used in connection with confirming a plan in this case.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

4. 13-34801-E-13 NLE-1 | **ESTHER HWANG** | **Eric J. Gravel** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 12-26-13 [20]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 26, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to continue the Objection to 3:00 p.m. on February 25, 2014, after the Continued Meeting of Creditors. No appearance at the January 28, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Trustee has continued the 341 meeting to February 20, 2014 as he has not completed his investigations.

Trustee states that Debtor has indicated on Schedule I that they have been self-employed in a collectible business for 15 years but did not schedule the business on Schedule B, which may mean the plan does not pay unsecured creditors at least what they would receive in a Chapter 7.

The Trustee also states the plan does not appear the Debtor's best efforts, 11 U.S.C. § 1325(b). The Trustee has reviewed six months of bank statements provided by the Debtor showing that the Debtor has more income, an average in deposits of $12,000.00 per month rather than the $5,206.00 listed on Schedule I and Form 22C.

Additionally, the Trustee states that the Statement of Financial Affairs showed annual income in 2011 of $61,349.00, 2012 of $47,778.00, and 2013 year to date of $52,000.00 where it was dated November 20, 2013. However, Schedule I reflects a monthly income of $5,206.00, which would be $62,472.00 of annual income. Trustee states that based on these documents,

it is not clear whether the Debtor can afford the plan payments of $122.00. Trustee is also concerned that Debtor has traveled to Thailand in the last few months and to South Korea several months before but only lists a travel expense of $143.00.

The Trustee states he has also reviewed the Debtor's Business website and discovered that the business website includes a solicitation for contributions to an organization it describes as a charity, Pandora's Hope. Schedule I & J and Statement of Financial Affairs, do not show charitable contributions or charitable contributions of $100 or more in the last year. The Trustee seeks to verify the amounts contributed to this charity, and to ascertain that this charity is in active status in California to determine it qualifies under 11 U.S.C. § 1325(b)(2)(A)(ii). The Trustee wants to make certain that not only is the plan the Debtor's best efforts, (11 U.S.C. § 1325(b)), but that the Debtor is complying with applicable law so the plan as proposed complies with applicable law, 11 U.S.C. § 1325(a)(1)&(3).

DEBTOR'S DECLARATIONS

Debtor filed a Declaration on January 21, 2014, stating that she owns a 50% interest in the business known as esther.com, LLC and that Henry Baba owns the other half. Debtor states Mr. Baba funds the account when needed and at the time of filing, there was about $7,000.00 in re-saleable inventory. Debtor states that the entire inventory was paid for by a loan from Henry Baba to the LLC and that she did not contribute cash to the purchase of any inventory. Debtor states that Mr. Baba controls the financial affairs of her account, depositing month from his own businesses and advancing money when needed.

Debtor states her travel expenses are paid for my her fiancé or advanced by clients.

Debtor also filed the Declaration of Henry Baba stating his interest in esther.com, LLC.

DISCUSSION

While Debtor's declarations addressed some of the issues raised by the Trustee, it appears the Trustee needs more time to investigate outstanding issues with Debtor and her business. The court grants the continuance to February 24, 2014, which is after the continued meeting of creditors.
The court shall issue a minute order substantially in the following form holding that:

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

IT IS ORDERED that the hearing on the Objection to confirmation is continued to 3:00 p.m. on February 24, 2014.

5.	11-21003-E-13 EJS-5	HENRY/TAMMY DOWNS Eric John Schwab	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF NELSON & SCHWAB FOR ERIC JOHN SCHWAB, DEBTORS' ATTORNEY(S), FEES: $1,115.00, EXPENSES: $2.76** **12-19-13 [84]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 19, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is granted. No appearance required.

Law Offices of Nelson & Schwab, Counsel for Debtor, seeks additional attorney fees in the amount of $1,115.00 and expenses in the amount of $2.76. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Objection to Claim: Counsel corresponded with clients regarding the return of a motorcycle title, correspondence with Harley Davidson regarding the same; and filing an objection to claim to verify Harley Davidson's status as an unsecured creditor.

The Chapter 13 Trustee filed a non-opposition to the Motion.

The hourly rates for the fees billed in this case are $325.00/hour for counsel Eric Schwab and $225.00/hour for counsel Thomas Amberg, Jr. for

3.7 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $1,115.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Counsel also seeks the allowance and recovery of costs and expenses in the amount of $2.76 for postage. The total costs in the amount of $2.76 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Compensation filed by Counsel for Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Law Offices of Nelson & Schwab, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Nelson & Schwab, Counsel for Debtor
> Applicant's Fees Allowed in the amount of $1,115.00
> Applicants Expenses Allowed in the amount of $ 2.76.

6. 13-34303-E-13 R-1 RAYMOND CLIFFORD AND RHONDA WILSON — MOTION TO VALUE COLLATERAL OF LAND HOME FINANCIAL SERVICES 12-17-13 [25]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 17, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Land Home Financial Services, holding the second deed of trust secured by the real property located at 8969 Rosetta Circle, Sacramento, California. Debtors provide their Declaration in support of the motion, stating in their opinion the property is worth $130,000. FN.1. Debtors state "In our opinion, the replacement value of the above mentioned real property is $130,00.00." Dckt. 27. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to properly designate a Docket Control Number. Local Bankruptcy Rule 9014-1(c) states the requirements for a Docket Control Number with examples. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

OPPOSITION

Trinity Financial Services, LLC, successor in interest to Land Home Financial Services ("Creditor") filed opposition to the motion, contesting the value of the property. Opposition, Dckt. 40. Creditor argues that the

property is worth approximately $180,000.00. However, there are two issues with the opposition provided.

DISCUSSION

First, The opposing party filed the opposition and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

The Local Bankruptcy Rules and Guidelines exist for a very practical reason. With the court operating in a near paperless environment, combining of pleadings into one massive document renders it all but unworkable electronic document. The court does not have a differential application of the rules by which some attorneys must comply with the rules and other attorneys may selectively chose which rules they accept as applying to them. The court has also observed that the more complex the combined document into which the grounds are hidden, the more likely it is that no proper grounds exist.

Second, Creditor did not provide admissible evidence for the court to consider. Creditor merely attached an unauthenticated appraisal to the opposition. See Fed. R. Evid. 901. The appraisal not having been properly authenticated and no testimony having been provided by the person purporting to have an opinion as to value, the court does not have competing evidence to consider of the value of the subject real property.

The first deed of trust secures a loan with a balance of approximately $151,000.00. Creditor Trinity Financial Services, LLC's second deed of trust secures a loan with a balance of approximately $87,893.00. Therefore, based on the evidence presented, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Trinity Financial Services, LLC secured by a second deed of trust recorded against the real property commonly known as 8969 Rosetta Circle, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $130,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

7. 11-28506-E-13 JOHN/CINDY LEMIEUX MOTION TO CONFIRM PLAN
JT-2 John Tosney 12-6-13 [33]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2013. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtors are modifying their plan to reduce the percentage to unsecured creditors because the plan will not complete within 60 months at 8.46% to unsecured creditors. Debtors are proposing to reduce the percentage to 7.5%, which is feasible. However, the Trustee states the Debtor has not addressed whether Cindy Lemieux is still receiving unemployment some 32 months after filing or whether she has received employment, whether the Debtor is still only paying $863.87 on the mortgage where the mortgage included property taxes and insurance, and the Debtor has not explained how her income and expense schedules have "varied substantially."

The court agrees that where the Debtor is proposing to reduce the percentage to creditors holding unsecured claims, the court cannot rely on income and expenses statements from three years ago that do not appear to reflect their current income and expenses.

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

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

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

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

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

8.	**13-28807-E-13**	**CHRISTOPHER/ANGELA JOHNSON**	**MOTION TO CONFIRM PLAN**
	SJS-2	**Scott Johnson**	**12-4-13 [38]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted. No appearance required.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. 13-34308-E-13 CHERYL JONES — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
PD-1 Pro Se — 12-23-13 [26]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 23, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis Debtor's Chapter 13 makes no provision for Creditor's secured claim. Moreover, Debtor's Chapter 13 Plan contains no provision for payment to Creditor on its pre-petition arrears. Creditor states that the current monthly payment is $2,009.88 and the pre-petition arrearage is $90,207.03 and that Debtor will have to increase the payment by approximately $1,503.46 in order to cure the pre-petition arrears over a period of 60 months.

Section 1322(a) specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

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

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

Furthermore, the objecting creditor holds a deed of trust secured by the Debtor's residence and asserts 90,207.03 in pre-petition arrears. The Plan does not propose to cure these arrears. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrears, the plan cannot be confirmed.

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

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

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

10. 13-34308-E-13 CHERYL JONES **OBJECTION TO CONFIRMATION OF**
TSB-1 Pro Se **PLAN BY DAVID CUSICK**
12-23-13 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on December 23, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection to Confirmation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to properly prepare the following Chapter 13 documents:

a. Schedule J lists debtors net income as -$1,411.00.

b. Schedule J fails to list an expense for the following items: water, phone, recreation, health insurance and self-employment taxes.

c. Section 2.15 is blank. The debtor failed to list a dividend to the unsecured creditors.

d. Schedule A lists debtors single family home located at 521 River Acres Rd. Junction City, Ca. The value of the property is listed as "unknown" and the amount of secured claim is listed as "in dispute." Debtor does not list any creditors in the plan and no secured creditors are listed on Schedule D. The plan appears to be incomplete, as Schedule J lists an ongoing mortgage payment in the amount of $1,554.00.

e. Schedule B fails to value all of the debtors assets listed, provide description to all values listed.

f. Schedule C fails to exempt any of debtors assets.

g. Debtor failed to list the amount of claim to Wells Fargo on Schedule F. No other information was listed on Schedule F, except 'Wells Fargo."

h. The Statement of Financial Affairs is incomplete. Debtor provides no information in the entire document.

i. The Debtors voluntary petition fails to state debtors full middle name. The petition lists her middle name as "M."

Also, the Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

The Trustee also states that he has requested the Debtor to provide him with answers to certain questions about the debtor's business and other documentation, which she has failed to do.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

11. 11-27109-E-13 BILLY WASSNER — MOTION TO VALUE COLLATERAL OF GMAC MORTGAGE, LLC
ACK-3 Aaron C. Koenig — 12-13-13 [53]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 13, 2013. However, the respondent creditor was not served at a verifiable address. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of GMAC Mortgage, LLC. However, service is not proper. Debtor served GMAC Mortgage, LLC at an address in Fort Washington, Pennsylvania. The address specified on the California Secretary of State Business Search database is 8400 Normandale Lk Blvd, #350, Bloomington, Minnesota. The court has no way of determining that service at the Pennsylvania address complies with Federal Rule of Bankruptcy Procedure 7004, 9014. FN.1.

FN.1. From reviewing Proof of Claim No. 14 filed by GMAC Mortgage, LLC, it appears that this is an address for the "bankruptcy department," not an agent for service of process or the location of an officer upon whom service could be made by the Debtor.

Additionally, while citing to Proof of Claim No. 14 filed on July 25, 2011, Debtor misses the Notice of Transfer filed on March 26, 2013, stating that the claim has been transferred to Ocwen Loan Servicing, LLC. Given that Ocwen Loan Servicing, LLC commonly only works as a servicing company for the actual third-party creditor, the is unsure as to whether this Transfer of claim is accurate. There are no documents supporting the transfer filed with the court. The court cannot tell if Ocwen Loan Servicing, LLC is actually the creditors (as defined in 11 U.S.C. § 101(10)) or is merely a third-party servicer who has no ownership interest in the note and is a shield hiding the identity of the actual creditor – protecting it from this very type of motion. The court shall address this through an order to appear for Ocwen Loan Servicing, LLC and its counsel who has filed

the documents representing that the claim has been assigned to Ocwen Loan Servicing, LLC.

Further, Debtor incorrectly concludes that by filing a claim, this creditor (whomever it is) has consented pursuant to Federal Rule of Bankruptcy Procedure 7004(h)(1) to service on the counsel signing the proof of claim. First, that paragraph applies to federally insured financial institutions. As stated by Debtor, the FDIC website does not list GMAC Mortgage, LLC as a "federally insured financial institution." Secondly, even if a federally insured financial institution, GMAC Mortgage, LLC has not appeared in this Contested Matter. A attorney merely signing and filing some other pleading in the case or signing a proof of claim does not make that attorney the agent for service of process for all contested matter and adversary proceedings to be filed against that creditor.

Finally, it is clear that this Limited Liability Company is not a federally insured financial institution. The California Secretary's of State website lists GMAC Mortgage, LLC as an active entity. In addition to the Bloomington, Minnesota address listed above for its office, the Secretary of State also identified Corporation Service Company as the Limited Liability Company's agent for service of process.

Based on the lack of proper service, the motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

12.	13-31109-E-13 NLE-1	RONALD DICKERSON AND MARY SANER Gerald Glazer	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-3-13 [16]

CONT. FROM 12-17-13, 10-29-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 3, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan was not filed in good faith under 11 U.S.C. § 1325(a)(7). Trustee states that Debtors propose a 36 month plan paying $75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims.

Trustee argues that it does not appear the Debtors are attempting to restructure their debts in good faith and that other than proposing to pay Debtors' counsel fees of $2,100.00, Debtors do nothing to restructure their finances. Trustee argues that this Chapter 13 case is nothing more than a disguised Chapter 7 which appears to be in violation of the Supreme Court's ruling in *In re Dewsnup*, 502 U.S. 410 (1992).

Additionally, the Trustee argues the Debtors' plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors list on Schedule B a potential lawsuit, listed at an unknown value. The asset is exempted on Schedule C also in an unknown amount. The Trustee

argues the non-exempt equity, if any, upon the claim being realized should be contributed to the plan.

The Trustee argues that the proposed plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are below median income proposing a 36 month plan paying $75.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims. Trustee argues that Debtors are not proposing all their disposable income into the plan. Debtors list their residential real property in Class 3 of the plan to surrender the property. Trustee states that Debtors testified at the 341 meeting that they have not yet received a notice of default or any foreclosure action by the lender on the property but that they have missed five (5) mortgage payments. Debtors list an expense of $1,100.00 per month for mortgage or rent. Trustee states that Debtors also testified at the 341 meeting that the expense for rent or mortgage was an anticipated expense that will begin upon the foreclosure of their residence.

Trustee argues that Debtors should be required to commit their projected disposable income into the plan and until the time they are moving, rent is not a necessary expense. Trustee argues the plan payment should be increased by $1,100.00 per month.

Lastly, the Trustee argues the Debtor may not be able to make the payments called for under the plan. Debtor has only $270.00 in their bank accounts and no cash. Where the Debtor has not paid rent for 5 months and the Debtor has no cash and nothing in their checking and savings, the Trustee argues that the Debtor's income is less or the expenses are more than scheduled.

CONTINUANCE

The court continued the hearing to allow Debtor to file opposition.

OPPOSITION

The Debtor filed an opposition, stating that the Debtor's plan was filed in good faith and that they are willing to contribute any non-exempt interest in their lawsuit to the Chapter 13 plan. Debtors state they are using their best efforts and gave their best estimate of their income and expenses on the bankruptcy forms. Mr. Dickerson has found a job and filed updated schedules to reflect the change. Debtors also state they are helping Mr. Dickerson's daughter, who is a single mother of three, with $350.00 a month to pay for daily living expenses. Debtors also state they live with Mr. Dickerson's mother, who is unable to meet her expenses and they contribute $60.00 per month for personal necessities.

Debtors anticipate moving in five months from December 12, 2013, and will no longer be able to help debtors' family at that time as they will need to use the money for rent.

TRUSTEE'S RESPONSE

Trustee responded, again stating that Debtors have done nothing to attempt to reorganize their debts, but instead are merely filing a

disguised Chapter 7. The plan proposes to pay nothing to secured claims or unsecured claims. The only party to receive payment in the plan is Debtors' counsel. Plan, Dckt. 5.

While the Debtors propose to contribute any non-exempt equity in their lawsuit to the Chapter 13 plan, Trustee states this does resolve the Trustee's concerns with liquidation. Debtors have not provided the Trustee with pertinent information relating to the lawsuit such as; which Court the matter is filed in, the case number of the lawsuit or information relating to the attorney representing the Debtor in this case. Debtors also have not filed a Motion to Employ Counsel with the Bankruptcy Court. Debtor did indicate at the 341 held on September 26, 2013, that the law firm handling the lawsuit is Dreyer, Babich, Buccola et al. Trustee states the lack of information relating to the potential lawsuit causes concern whether the order confirming can provide sufficient information so that the Debtors shall make the payments of the lawsuit funds as proposed.

The Trustee objected to the plan based on whether the 8 Debtors contribution of $75 was Debtor's best effort in light of the fact that the $1,100 per month rent expense was a projected expense, not currently being paid by the Debtors. In response to this portion of the objection, the Debtors filed Amended Schedule I and J. The new expense report list significant changes to the Debtors' original household budget and include several new expenses, such as $500 assisted living for Debtors, $60 to assist mother, $350 to assist daughter/grandchildren, $250 per month for tools for new job and $431.69 savings for moving expenses. The Debtors indicate in the declaration in support of the Debtors' opposition to the Trustee's objection, that once the Debtors' move, they will no longer be able to assist their family members, and are not certain how the parties will then meet their expenses.

Trustee states that Debtors offer no information or evidence as to what the current sources of income and household income for both parties. Debtors do not indicate how long they have been contributing to each member. Debtors also fail to show bank statements to support their claim that they are saving $431.69 per month for the move. Nor do the Debtors supply any evidence in the form of receipts to support the claimed expense of $250 per month for tools. It appears the Debtors are creating expenses to avoid paying toward the plan, as they clearly indicate that the expenses are not going to continue, but are temporary expenses due to their current ability to pay them.

Trustee argues that despite the fact that debtors admitted at the 341 held on September 26, 2013, that they had not paid their mortgage payments on the residence at 5632 Sapunor Way, Carmichael, California in approximately 5 months. The concern is that if they had not paid mortgage in 5 months and had no excess funds in their accounts or in their pocket, how will Debtors be able to maintain their plan payment, their household expenses and the rents once they move. In addition now, the Debtors have indicated that they have several family members who are also not able to support themselves and have placed an additional burden on the Debtors' financial shoulders.

The Trustee requests the Debtors be required to provide bank statements for accounts for the 90 days prior to filing and for the time that has elapse since filing and also that the Debtors provide receipts for purchases of tools since filing. The Trustee also requests the Debtors supply information relating to sources of income for those the Debtors claim to be assisting with support.

DEBTOR'S REPLY

Debtors reply, stating they have given the Trustee the information regarding the personal injury lawsuit, located in the Statement of Financial Affairs, Item number 4. Debtors also state they have supplied all the information requested by the Trustee in this matter.

DISCUSSION

The court agrees with the concerns of the Trustee.

First, it appears to the court that Debtors have filed a thinly disguised Chapter 7 liquidation, with on good faith attempt to reorganize their debts. The plan proposes to pay nothing to secured claims or unsecured claims and the only party to receive payment in the plan is Debtors' counsel. Plan, Dckt. 5. Debtors have offered no argument or evidence to the contrary.

Second, the Debtors have not offered sufficient information or evidence as to what the current sources of income, household income for the parties, and expenses. The court agrees that Debtors have not offered evidence to show they are saving $431.69 per month for the future move or support the claimed expense of $250 per month for tools. The court is concerned that the Debtors are altering their expenses to avoid paying more to unsecured creditors. Debtors have not offered argument or evidence to the contrary. Mere statements that the plan is in "good faith" and that they are using their "best efforts" are legal conclusions without any basis for the court to so conclude.

Third, the Debtors appear to have hired the Dryer law firm as special counsel to prosecute claims which are property of the bankruptcy estate. The Chapter 13 Debtors appear to be exercising the powers of a bankruptcy trustee to prosecute this asset of the estate. On its face, 11 U.S.C. § 1303 provides that a Chapter 13 debtor may exercise the rights and powers of a trustee under § 363 of the Bankruptcy Code. To the extent that it is contended that the hiring of special counsel and prosecuting this litigation is that which would be done by a trustee, the trustee would have to obtain court authorization to employ such counsel. 11 U.S.C. § 327.

While there is a recognition that § 1303 doesn't work to limit the exercise of other necessary powers as the fiduciary of the bankruptcy estate, a Chapter 13 is not a situation where the debtor is free to do whatever he or she wants with whatever professional, secret from the court, Chapter 13 Trustee, and parties in interest. FN.1.

FN.1. See discussion in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1303.04; *Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (B.A.P. 9th Cir. 2004).

Even if not subject to prior court authorization to employ is required, 11 U.S.C. § 329 requires that any attorney who provides services for a debtor must provide disclosures to the court and parties in interest. This section states,

> § 329. Debtor's transactions with attorneys
>
> (a) **Any attorney representing a debtor in a case under this title, or in connection with such a case**, whether or not such attorney applies for compensation under this title, **shall file with the court a statement of the compensation paid or agreed to be paid**, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to–
>
> (1) the estate, if the property transferred--
>
> (A) would have been property of the estate; or
>
> (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

11 U.S.C. § 329 [emphasis added]. As the Dreyer Firm is actively representing the Chapter 13 Debtors in prosecuting these claims which are property of the bankruptcy estate, these fees are to be paid after one year before the case was filed. No such statement by the Dreyer firm has been filed with the court.

While the court would be surprised if the Dreyer Firm employment terms was not the standard for this type of claim, the court is concerned with the Debtors lack of "knowledge" concerning this claim and its value. On Schedule B the Debtors state under penalty of perjury that the value of this "potential claim" is "unknown." Dckt. 1 at 14. However, on the Statement of Financial Affairs the Debtors state that they have already filed suit on this claim. (California Superior Court, County of Sacramento, Case No. 34-2012-00137505). Dckt. 1 at 34. From the case number, the state court action was filed in 2012, now almost two years ago. It is not a "potential claim," but an actual claim being litigated.

Even more significant is the feigned ignorance as to the value of the claim the Debtors are asserting. The Dreyer Firm is well known in the region for successfully prosecuting plaintiff's injury claims. When they prosecute a case it is highly likely that the claim will be successfully

prosecuted and that there will be a significant recovery. If nothing else, the Debtors could have truthfully and honestly stated under penalty of perjury that the complaint had been filed seeking $XX,000,000 in damages. Instead, the Debtors state under penalty of perjury that they have no knowledge of what they are seeking to recover.

This inaccurate disclosure under penalty of perjury puts into question the Debtors' good faith in prosecuting a plan in this case (11 U.S.C. § 1325(a)(3)), as well as their ability to serve as the fiduciary of this bankruptcy estate

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

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

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

13. 11-21410-E-13 AMADEO MALDONADO — MOTION TO MODIFY PLAN
PGM-4 Peter Macaluso — 12-13-13 [75]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that he is uncertain if the Debtor has the ability to make the plan payment. Debtor filed his Petition on January 19, 2011. Since that time the Trustee has issued one Motion to Dismiss for failure to provide for a priority claim and delinquency filed July 30, 2012 and two Notice of Defaults and Applications to Dismiss for failure to make payments filed August 15, 2013, and November 15, 2103 (see Dckts. 46, 70 and 72 respectively). Debtor resolved the Trustee's Motions by either filing modified plans or bringing his plan payments current.

Debtor's Motion and Declaration state Debtor is making all medical payments for both his mother and mother in law, which has resulted in his need to further modify his plan. Debtor's Schedule J budgets $50.00 per month for medical and dental expenses, which is identical to what Debtor budgeted on his original Schedule J. See Dckts. 1, 78. Trustee states that if debtor is making additional medical payments he has not included them in his Supplemental Schedule J.

Trustee argues that the only changes Debtor has made in his expenses when compared to his prior Schedule J is an increase in food from $795.00 to $900.00, an increase in childcare and education from $450.00 to $465.00, a decrease in clothing, laundry, and dry cleaning from $80.00 to $30.00, and an increase in personal care from $100.00 to $150.00. Debtor has set out these changes in a table format within his Declaration although the original

amounts depicted for Food and Clothes are incorrect and the table does not include personal care.

DEBTOR'S RESPONSE

Debtors respond, providing a corrected chart of changed expenses, mentioned in the Opposition.

However, Debtor does not address the issues with the medical payments for his mother and mother in law, when his expenses show only $50.00 for both medical and dental expenses (which is identical to what debtor budgeted in his original Schedule J). The court agrees that more evidence is required in order for the court to determine if Debtor can afford the proposed plan payments. Further, that the Debtor needs to file a new motion and declaration which truthfully and accurately provides accurate testimony under penalty of perjury. Testifying in federal court is not merely an opportunity to say "whatever," and then when caught to take the time to testify truthfully.

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

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

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

14. 13-32112-E-13 JESS BAILEY **MOTION TO CONFIRM PLAN**
JGD-1 John Downing **11-12-13 [19]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 77 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes confirmation offering evidence that the Debtor is $1,340.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Chapter 13 Trustee also objects on the grounds that Debtors plan fails the Chapter 7 Liquidation Analysis. Debtors non-exempt assets total $2,000.00 and Debtor proposes to pay 0% to unsecured creditors. According to Debtors Schedules A, B and C, non-exempt equity exists in two properties, one at 22167 Willow Street, Floriston, California and one at 22207 Willow Street, Floriston, California. These properties are valued at $1,000.00 each.

The Trustee also states that Debtor's plan indicates that Debtor is attempting to get a loan modification with Nationstar Mortgage. The plan does not contain any language for the treatment of the creditor if a loan modification is denied, but merely that the Debtor will amend the plan. The Trustee has not received any documentation fo the Debtor applying for a loan modification to date. No Motion to Approve Loan Modification has been filed or set for hearing to date.

Lastly, Section 2.07 of the plan lists $0 to be paid monthly as administrative expenses. Section 2.06 indicates that attorney fees of $1,400.00 are due through the plan.

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

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

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

15. 13-33513-E-13 MARLON/REBECCA LAWAS — MOTION TO DISGORGE FEES
DPC-1 Yasha Rahimzadeh — 12-13-13 [42]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 13, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Motion to Disgorge Fees. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves the court for an order disgorging attorney fees in this case pursuant to 11 U.S.C. § 329 & 526, as the fees received exceed the reasonable value of such services. The Trustee argues that the Debtor's attorney has charged and received $2,250.00 and failed to properly prosecute the case.

The Trustee bases this motion on several facts. First, the Debtors did not sign the petition. Second, no wet or electronic signatures appear on the Rights and Responsibilities of Chapter 13 Debtors and their

Attorneys, which were filed on October 18, 2013. The Trustee states he is not certain if the Debtors ever reviewed it or understood the contents. Debtors failed to commence plan payments to date and Debtors signed the proposed plan filed October 30, 2013.

Third, the Trustee states that on December 10, 2013, Debtor's Counsel sent an email to their office stating that Debtors experienced a financial emergency in November and were unable to provide a payment to their office. Debtors sought a "wavier of the requirement to make such a payment" and requested the payment due date be moved to the 30th of the month. Trustee states that Counsel was advised that all payments are due on the 25th of the month on all cases and that if Debtors are unable to make the payment, the plan may be amended. Debtor responded, "In light of the Trustee's decision denying the Debtors' requests for a waiver of their November payment and change of their future payment dates, Debtors have indicated that they will not be able to provide plan payments. As such, they have also indicated that they will not oppose a dismissal of the above-referenced bankruptcy proceeding."

Trustee seeks an order disgorging attorney fees in the full amount of $2,250.00 in this case.

OPPOSITION

Debtor's Counsel Yasha Rahimzadeh, opposes the motion on the grounds that she properly advised the Debtors of their responsibilities. Counsel states that the fact that Debtors were unable to comply with the requirements is not the fault of Counsel.

Counsel states that the electronically submitted document does not have signatures on it by provides exhibits, which she states the Debtors had the opportunity to review and executed.

Counsel argues that after being informed of the Trustee's decision denying Debtors' requests for a waiver of their November Plan payment and adjustment of their future Plan payment dates, Debtors voluntarily decided to allow their case to be dismissed. Furthermore, Counsel argues that in light of the Debtors inability to provide timely Plan payments, Counsel could not successfully either amend the Debtor's Plan or oppose the Trustee or a creditors objection to confirmation of Debtors' Plan.

Lastly, Counsel states the retainer of $2,250.00 is reasonable for the amount of work completed. This includes over an hour meeting with Debtors obtaining information necessary to determine their option, explaining benefits, and determining which Chapter of the Bankruptcy Code to seek relief. Counsel states she spend several hours drafting the Debtors' voluntary petition and the accompanying documents, communicating with Debtors to obtain the information necessary to complete the documents. Counsel states she attended and represented the Debtors at the meeting of creditors in this case.

Counsel does not provide a detailed billing statement for the time spent on this case.

DISCUSSION

This court has the authority, and responsibility, to consider attorneys' fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. § 329, 330, 331. Fees in excess of the reasonable value of such services may be ordered repaid. The application of 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure, may seem harsh, but are necessary to not only protect vulnerable consumers and business owners, but to protect the integrity of the federal judicial process. *See Neben & Starrett v. Chartwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. Cal. 1995). Debtor's counsel must lay bare all its dealings regarding compensation and must be direct and comprehensive. *See In re Bob's Supermarket's, Inc.*, 146 Bankr. 20, 25 (Bankr. D. Mont. 1992) *aff'd in part and rev'd in part*, 165 Bankr. 339 (Bankr. 9th Cir. 1993). The burden is on the person to be employed to come forward and make full, candid, and complete disclosure. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

The court is not satisfied with the response of Counsel. Even if the court finds the testimony that Counsel reviewed and Debtors properly signed the Rights and Responsibilities, petition and plan, there appear to be other fundamental problems. The correspondence provided by Counsel, namely the email sent to Debtors regarding the Trustee's "rejection of the request to waive the required payment for November and to change the plan payment date" shows Counsel's misunderstanding of the Bankruptcy Code and Rules. Exhibit, Dckt. 63. Counsel only relayed that the payment had to be made and made no mention of the possibility to amend the plan and possibly reduce the plan payment (the court notes that the initial plan called for 76% to unsecured claims which could have been reduced). The response from the Debtors shows one of their reasons for allowing the case to be dismissed is that they could not come up with the November payment. Exhibit, Dckt. 64.

Further, Counsel's response indicates a lack of knowledge about the local rules. Local Bankruptcy Rule 3015-1(f)(1) provides that the plan payments shall be made monthly and **must** be received by the Trustee on the twenty-fifth (25th) day of each month. Local Bankr. R. 3015-1(f)(1)(emphasis added). The local rules do not allow the Trustee to alter the payment date. Additionally, a modification of the plan (pursuant to 11 U.S.C. § 1329 and Local Bankruptcy Rule 3015-1(d)) is allowed in order to make up missed payments (with language in the Additional Provisions section disclosing the distribution of payments). From the evidence provided, it does not appear that counsel was aware of these rules and therefore, did not properly advise Debtors of their options.

Most importantly, Counsel has not provided detailed time records in order for the court to properly determine if the time spent is reasonable. Based on the limited information provided in Counsel's opposition as to the time spent, the court determines Counsel spent approximately 5.5 hours in meeting with and analyzing the Debtor's circumstances, preparing the bankruptcy documents and attending the 341 meeting. With the retainer provided of $2,250.00, this equates to an hourly rate of approximately $410.00 per hour. The court finds this rate unreasonable in light of Counsel's skill and knowledge of Chapter 13 bankruptcy.

Further, Local Bankruptcy Rule 2016-1(c)(4) provides that in a Chapter 13 case if the plan is not confirmed, counsel for the debtor may not be paid more than 50% of the fees which were contracted for to prosecute the case, absent further order of the court. No such further order of the court has been issued in this case. The Disclosure of Compensation states that counsel agreed to accept $4,000.00 for the fees in this case, getting the Debtor through confirmation and entry of discharge. Dckt. 1 at 40.

In reviewing the various documents and arguments, there appears to be a clear misunderstanding of the Chapter 13 Plan process and requirement payments from Debtors. Debtor payments must be made by the 25th day of each month. Local Bankruptcy Rule 3015-1(f)(1). Counsel argues that the Debtors could not make the payments until the 30th of the month, and so the request was made of the Trustee to give these Debtors a different payment date. The Trustee refused to create a *sui generis* plan payment date for these Debtors, and note for Counsel that the proposed plan would have to be amended as the Trustee could not ignore a defaulted payment.

At this juncture the Debtors and Counsel could have simply modified the plan to have the payments start with the first month after the first monthly plan payment otherwise would have been due. Thus, when the Debtors make a payment on the 30th day of a month, that payment applied to the payment due on the 25th day of the next month. This did not occur, with the Debtors and Counsel instead walking away from the bankruptcy case.

The court finds $250.00 an hour a more appropriate rate for counsel and the knowledge of Chapter 13 bankruptcies shown in this case. Allowing counsel the full 53.5 hours (which in light of what has transpired in this case may be generous) the court finds that fees of $1,375.00 are appropriate pursuant to 11 U.S.C. § 329(b). The remainder of the attorney fees, $875.00 are ordered to be disgorged, paid to the Chapter 13 Trustee, and the Chapter 13 Trustee disburse the full $875.00 to the Debtors.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Disgorge Fees filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Debtor's Counsel Yasha Rahimzadeh is ordered to disgorge $875.00 of attorney fees in this case. Yasha Rahimzadeh shall pay the $875.00 to the Chapter 13 Trustee on or before February 15, 2014. The Chapter 13 Trustee shall disburse the $875.00 directly to the Debtors.

16. 10-52114-E-13 NLE-1 JOHN BOORINAKIS AND LEONA AZAR-BOORINAKIS Richard Steffan
MOTION TO MODIFY PLAN 12-20-13 [32]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on February 11, 2014. No appearance at the January 28, 2014 hearing is required.

The Chapter 13 Trustee moves to modify Debtor's Chapter 13 plan based on the fact that the Debtor has received an inheritance, which appears sufficient to pay all claims 100%.

DEBTOR'S RESPONSE

Debtors oppose the motion, stating that the issue is whether or not a chapter 13 estate includes an inheritance received after the 180 day period. Debtor became entitled to distributions from his parent's trust in July 2013, upon the death of his father, which was more than 6 months after filing the case. Debtors have scheduled an amended Schedule B.

Debtors argue that the chapter 13 estate should not include an inheritance received after 180 days based on nonbinding law and statutory interpretation analysis.

DISCUSSION

The court recognizes a unique relationship between section 541 and section 1306 of the Bankruptcy Code. The Filing of a bankruptcy petition creates a bankruptcy estate containing all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). Furthermore, section 541(a)(5)(A) states that property of the estate includes,

> (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date —
>
> (A) by bequest, devise, or inheritance . . . .

11 U.S.C. § 541(a)(5)(A). This provision "applies to interests acquired postpetition where the measuring death occurs between the filing of the bankruptcy petition and the termination of the one hundred and eighty (180) day period." *Chappel v. Proctor (In re Chappel)*, 189 B.R. 489, 494 (9th Cir. B.A.P. 1995).

In a Chapter 13 case, section 541(a) is supplemented by section 1306(a), which expands the scope of the bankruptcy estate. The section provides,

> (a) Property of the estate includes, **in addition** to the property specified in section 541 --
>
> (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 [the Code], whichever occurs first...

11 U.S.C. § 1306(a) (emphasis added). The Ninth Circuit has not determined the issue of whether an inheritance which postdates the bankruptcy petition by more than 180 days is property of the bankruptcy estate.

However, the Fourth Circuit recently discussed the relationship between section 541(a) and section 1306(a) and held that 1306(a) plainly extends the time line for including the kind of property specified in section 541 in Chapter 13 bankruptcy estates and affirmed the bankruptcy court's inclusion of the inheritance in the chapter 13 bankruptcy estate. *Carroll v. Logan*, 735 F.3d 147, 149 (4th Cir. 2013). As the court explained,

> Congress has harmonized these two statutes for us. With Section 541, Congress established a general definition for bankruptcy estates. With Section 1306, it then expanded on that definition specifically for purposes of Chapter 13 cases. Thus, "Section 1306 broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case." S. Rep. No. 95-989, at 140-41 (1978).
>
> The statutes' plain language manifests Congress's intent to expand the estate for Chapter 13 purposes by capturing the types, or "kind," of property described in Section 541 (such as bequests, devises, and inheritances), but not the 180-day temporal restriction. 11 U.S.C. § 1306(a). This is because

> "[t]he kind of property is a distinct concept from the time at which the debtor's interest in the property was acquired." *In re Tinney*, 07-42020-JJR13, 2012 Bankr. LEXIS 3092, 2012 WL 2742457, at *2 (Bankr. N.D. Ala. July 9, 2012). And on its face, Section 1306(a) incorporates only the kind of property described in Section 541 into its expanded temporal framework.

Id. at 150. The court further explained,

> Section 1306's extension of a Chapter 13 bankruptcy estate's reach until the Chapter 13 case is closed, dismissed, or converted constitutes "a rational response to the relevant situation." *Salomon Forex*, 8 F.3d at 975. Chapter 13 proceedings provide debtors with significant benefits: For example, debtors may retain encumbered assets and have their defaults cured, while secured creditors have long-term payment plans imposed upon them and unsecured creditors may receive payment on only a fraction of their claims. See 11 U.S.C. §§ 1322, 1325...
>
> In exchange for those benefits, a Chapter 13 debtor makes a multi-year commitment to repay obligations under a court-confirmed plan. Id. The repayment plan remains subject to modification for reasons including a debtor's decreased ability to pay according to plan, as well as the debtor's increased ability to pay. See 11 U.S.C. § 1329. As we have stated before, "[w]hen a [Chapter 13] debtor's financial fortunes improve, the creditors should share some of the wealth." In re Arnold, 869 F.2d 240, 243 (4th Cir. 1989)...

Id. at 151. This court finds the Carroll statutory analysis and policy considerations very persuasive. This court recognizes there are other courts that have held that property inherited more than 180 days post-petition is not property of the estate, but finds these cases are not persuasive and not binding on this court. FN.1.

FN.1. *See In re Key*, 465 B.R. 709, 712 (Bankr. S.D. Ga. 2012); *In re Walsh*, 07-60774, 2011 Bankr. LEXIS 2602, 2011 WL 2621018, at *2 (Bankr. S.D. Ga. June 15, 2011); and *In re Schlottman*, 319 B.R. 23, 24-25 (Bankr. M.D. Fla. 2004).

DISTRIBUTION ON TRUST INTEREST

However, based on the opposition filed by the Debtors, it is asserted that this asset was distributed from a trust, not by testate or intestate succession. Dckt. 42. Debtor's interest as a beneficiary of a trust was not originally listed on the schedules. The court notes that the Debtor has since amended his Schedule B to include the interest. Dckt. 40. Thus, it appears that the beneficial interest in the Trust is property of the estate. Therefore, it further appears that any distribution on that interest is property of the bankruptcy estate. As the parties have not

addressed this trust issue, the court affords them the opportunity to provide supplemental briefs.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on February 11, 2014.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee and Debtors shall file supplemental briefs on or before February 7, 2013.

17. 13-33914-E-13 DEF-1 | **LAURA BRENNAN** / **David Foyil** | **CONTINUED MOTION TO AVOID LIEN OF FEED BARN** **12-3-13 [22]**

Final Ruling: The Debtor having filed a Withdrawal of the Motion to Avoid Lien, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**

18. 13-33914-E-13 DEF-2 | **LAURA BRENNAN** / **David Foyil** | **CONTINUED MOTION TO AVOID LIEN OF MARTIN HORSE AND BOARD CARE** **12-3-13 [27]**

Final Ruling: The Debtor having filed a Withdrawal of the Motion to Avoid Lien, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**

19. 13-33914-E-13 LAURA BRENNAN **CONTINUED MOTION TO CONFIRM PLAN**
DEF-4 David Foyil **12-3-13 [34]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Chapter 13 Plan to 3:00 p.m. on February 25, 2014. No appearance required.

The Chapter 13 Trustee opposes confirmation on the basis that the plan relies on two pending motions to Avoid Liens, set to be heard the same day as this confirmation hearing. The court having denied and continued the respective Motions to Avoid Liens, the Trustee's objection is sustained.

The Trustee also objects to the last sentence in paragraph 6.02 of the proposed plan that "The remaining unpaid non-dischargeable balance, shall not be paid by the Debtor until after completion of this plan (upon entry of final decree). Said claims shall not accrue interest during the pendency of this plan." Trustee states that this sentence appears unnecessary and may not be correct as to the accrual of interest during the plan.

Debtors respond, consenting to an order modifying the terms of the proposed plan such that the additional provisions set forth in the plan under Section 6.02 of the plan shall become deleted.

The Debtors re-filed the Motions to Avoid Liens and set them for hearing for February 25, 2014. The court will continue the hearing on confirmation to be heard in conjunction with those motions.

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

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

IT IS ORDERED that the hearing on the Motion is continued to 3:00 p.m. on February 24, 2014.

20. 11-20817-E-13 JACK/HELENE BLOMGREN — MOTION TO APPROVE LOAN MODIFICATION
EGS-2 John A. Tosney — 12-31-13 [77]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve the Loan Modification is granted. No appearance required.

Bayview Loan Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $4,104.24 to $1,874 with an estimated monthly escrow payment of $481.14. The modification will capitalize the pre-petition arrears and provides for a 2.00% interest rate for the next 17 months, followed by stepped increases in the interest rate from 2.00% to a maximum of 6.00% over the next 24 years.

The debtors, through counsel, have filed a joinder and supporting declaration requesting the court to approve the loan modification. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

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

IT IS ORDERED that Bayview Loan Servicing, LLC are authorized to amend the terms of their loan with Jack Philip Blomgren, II, and Helen C. Blomgren, which is secured by the real property commonly known as 2919 Pease Road, Yuba City, California, and such other terms as stated in the Modification Agreement filed as Exhibit "B," Docket Entry No. 81, in support of the Motion.

21. 13-30919-E-13 JDM-2 — BUN AUYEUNG AND SOO TSE — Peter G. Macaluso — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS — 11-26-13 [68]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to overrule the Objection to Debtor's Claim of Exemptions. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditors Barton and Paula Christensen ("Creditor") objects to Debtors' Amended Exemptions filed on November 1, 2013. However, no proof of service has been filed in support of the Objection. The Movant filed the Certificate of Service on January 14, 2014, showing the Objection had been servied on the Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on November 26, 2013.

Furthermore, no evidence was filed in support of the several factual contentions set forth in the twelve (12) page Objection. Most of these contentions discuss activity from the Debtor's prior case.

Debtors respond, stating they claimed the exemption of $175,000.00 pursuant to C.C.C.P. 704.200, as both Debtors are elderly and that the exemption should be fully allowed. Debtors argue that the arguments as to the issues in the prior case have no bearing on this case as to the claim of exemption.

DISCUSSION

First and foremost, no evidence was filed in support of the several factual contentions set forth in the twelve (12) page Objection. Local Bankruptcy Rule 9014-1(d)(6) requires that every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Movant has not done so.

Further, Movants spend most of the twelve pages disputing the valuation of the subject real property - and requesting that the court should accept the value of the property at $290,000.00 and the amount of the Christensen's lien at $140,000.00 based on the prior evidentiary hearing where the value was determined. Movant does not make clear the request for the court to deny Debtor's exemption. Movants state this valuation has been litigated and should not be re-litigated based on res judicata and collateral estoppel.

It appears Movant is arguing that Debtors should not be allowed the increased homestead exemption in this case of $175,000.00 as it pertains to the subject real property bur should be allowed the homestead exemption allowed in the prior case of $150,000.00. Movant spends several pages outlining the bad faith in their prior Chapter 13 (which was converted to a Chapter 7) to re-litigate an issue that has already been determined.

COLLATERAL ESTOPPEL STANDARD

In describing the five elements for Collateral Estoppel under California law, the Ninth Circuit Court of Appeals stated,

> Under California law, collateral estoppel only applies if certain threshold requirements are met:
>
> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001).

Cal-Micro, Inc. v. Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003). The party asserting collateral estoppel bears the burden of establishing these requirements. *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001)

Additionally, the determination of value for purposes of 11 U.S.C. § 506(a) is made only for specific purposes and the value may be determined at different times depending on the purpose of the valuation. In *Gold Coast Asset Acquisition, L.P. v. 1221 Veteran Street Co. (In re Veteran Street Co.)*, 144 F.3d 1288 (9th Cir. 1998), the Ninth Circuit Court of Appeals concluded that a valuation of property pursuant to 11 U.S.C. § 506(a) was not binding between the parties when it was not being used for the purpose for which the valuation was made in that case (confirmation of plan).

> "In the present case, the bankruptcy court valued the Property in light of Veteran's proposed plan of reorganization. Since the bankruptcy court rejected the plan, the valuation of the Property served no purpose under the Bankruptcy Code. Therefore, the valuation should not affect Gold Coast's rights to postpetition rents under section 552. The rents generated by the Property constituted Gold Coast's collateral and, thus, were an improper source for L&E's award of attorneys' fees. See *In re Cascade Hydraulics and Utility Service, Inc.*, 815 F.2d 546, 548 (9th Cir. 1987) ("Administrative expenses or the general costs of reorganization may not generally be charged against secured collateral.")."

Id. at 1292. In the present case, Movant seeks to use a valuation of property for purposes of a bankruptcy plan in another case years ago to be binding in determining the Debtors' exemption in this case.

The party "asserting collateral estoppel carries the burden of proving a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (B.A.P. 9th Cir. 1995); cited by *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007). If the Court has a reasonable doubt as to what was actually decided by the prior judgment, it will refuse to apply preclusive effect. *Id.*

Collateral Estoppel is a variant of the fundamental Res Judicata Doctrine. The Ninth Circuit Court of Appeals addressed the modern application of this Doctrine in *Robertson v. Isomedix, Inc. (In re International Nutronics)*, 28 F.3d 965 (9th Cir. 1994). The court considers four factors in determining whether Res Judicata applies,

> "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts."

Id. at 970, citing *Clark v. Bear Sterns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992). Applying these factors yields a decision that Res Judicata does not bar Debtors from asserting their exemption in this case. There are no "rights or interests" from a prior action which would be destroyed or impaired. In fact, the "valuation" for purposes of § 506(a) in the prior case has no bearing on the exemption claimed in this case.

A review of the Order Granting Motion to Avoid Lien that Impairs and Exemption Pursuant to Section 522(f)(1)(A) (Case No. 09-35065-E-13L), Dckt. 108, filed August 30, 2010, demonstrates that the court did not determine the amount of the exemption. The Order determined that the judgment lien of Barton and Paula Christensen against the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, was avoided pursuant to section 11 U.S.C. § 522(f)(1)(A) for all amounts of the judgment in excess of $140,000.00.

The court does recall the bad faith activity of the parties in the prior bankruptcy and there may be merit in the argument that Debtors are not entitled to reap the benefits of an increased exemption based on their prior bad faith. The court further notes that based on a review of the Chapter 13 plan in this case, it appears the only major debt being addressed is the obligation owed to Movant. Chapter 13 Plan, Dckt. 5. However, Movant has not provided sufficient legal authority or admissible evidence for the court to find that the claimed exemption is not warranted.

Possibly other legal theories may exist as to why the Debtors should not be asserting the higher exemption amount. Further, why the increase should not apply to this judgment lien. However, no other theories have been presented to the court. This court will not be so presumptuous as to think that there would be other theories which have not been presented or that it would be proper for this court to identify, develop, or argue such theories for either party.

As the court finds that neither the Doctrine of Collateral Estoppel or the Doctrine of Res Judicata does not apply, the Objection is overruled. In overruling the objection, the court does not make a determination as to the amount of the exemption which applies to this creditor's judgment lien. Presumably that issue will be addressed when either the Creditors proceed with an execution sale or the Debtors seek to avoid the lien pursuant to 11 U.S.C. § 522(f).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtors' Claim of Exemptions filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled.

22. 13-36120-E-13 GEORGE GRAHAM
SJD-1 Susan J. Dodds

MOTION TO VALUE COLLATERAL OF RBS CITIZEN
12-30-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 30, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1738 Lazelle court, Redding, California. The Debtor seeks to value the property at a fair market value of $100,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $118,000. RBS Citizens dba CCO Mortgage's second deed of trust secures a loan with a balance of approximately $54,548.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of RBS Citizens dba CCO Mortgage secured by a second deed of trust recorded against the real property commonly known as 1738 Lazelle Court, Redding, California, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $100,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

23. 10-27622-E-13 DBJ-5 | **TIMOTHY WOOD AND ANNE MURPHY** | **MOTION TO MODIFY PLAN** | **11-27-13 [93]**
Douglas Jacobs

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the plan on the basis that the Trustee is unable to administer the plan as proposed. The Debtor proposes to move creditor Rabo Bank from Class 4 of the plan to Class 1. Debtor refers to Additional Provisions for the arrearage amount and monthly

dividend, but fails to state the amount for arrears. The Trustee states he is unable to determine if the plan is feasible. The Creditor has not filed a claim in this case and the Debtor has not filed a claim for this Creditor.

The Trustee also states he is uncertain if the plan is the Debtor's best effort. The debtor's most recent statement of expenses reports on a mortgage payment of $2,292.00. The debtor indicated that property taxes and insurance were not included. Per the most recent Notice of Mortgage Payment Change filed 6-2-13 the monthly payment is $2,355.58 which includes $521.81 for hazard insurance, flood insurance and taxes. The debtor has included on line 11 a. of his statement of current income $247.00 for insurance. This is a net difference of $183.42 in additional income for the debtor.

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

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

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

24. 07-27123-E-13 DOREEN GASTELUM **CONTINUED MOTION FOR CONTEMPT**
PGM-4 Peter Macaluso **10-21-13 [123]**

CONT. FROM 11-19-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditors, all creditors and Office of the United States Trustee on October 21, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing to 3:00 p.m. on February 11, 2014. On or before February 7, 2014, the City of Chicago shall file a Status Report. No appearance at the January 28, 2014 hearing is required.

Debtor Doreen M. Gastelum ("Debtor") moves for an order to show cause concerning the violation of discharge under 11 U.S.C. § 1328 against the City of Chicago, A Municipal Department, City of Chicago Office of the Mayor Rahm Emanuel, Markoff Kransy LLC, Law Offices of Talan & Ktsanes, City of Chicago Department of Buildings, City of Chicago Department of Police, City of Chicago Department of Streets and Sanitation, and the City of Chicago Department of Revenue ("City"). Debtor seeks (1) injunctive relief by the court to determine whether Debtor should be liable for the pre-petition liability arising from the complaints relating to the real properties located at 1517 W. 61st Street, Chicago, Illinois and 356 West 45th Street Chicago, Illinois; and (2) a determination of whether the City is in violation of 11 U.S.C. § 1328 by seeking a claim that runs with the land prior to the filing of the Chapter 13 bankruptcy.

Debtor alleges that the City began enforcement of both pre-petition and post-petition claims after the Chapter 13 case was filed, confirmed and discharged. Debtor asserts the claims in this case start pre-petition and have grown to staggering amounts. Debtor has filed a new Chapter 13 bankruptcy, Case NO. 13-311441-E-13C on August 30, 2013 to remedy any post-petition claims.

EVIDENCE

Debtor alleges the following pre-petition activity by the City:

1. On or about January 13, 2007, the City filed and noticed an Administrative Complaint regarding the 45 Street Property. (Exhibit 1, Dckt. 128);

2. On or about February 23, 2007, the City conducted a hearing of the Administrative Complaint regarding the 45 Street Property. (Exhibit 2, Dckt. 128);

3. On or about March 6, 2007, a Findings, Decisions & Order was entered concerning the 45 Street Property. (Exhibit 3, Dckt. 128);

4. On or about March 21, 2007, the City mailed a "Collection Notice" regarding the Administrative Judgment against the 45 Street Property. (Exhibit 4, Dckt. 128);

5. On or about May 25, 2007, the law firm of Wexler & Wexler, LLC, acting as Counsel on behalf of the City of Chicago, A Municipal Corporation, sent a collection letter advising Debtor that an Administrative Judgment had been entered, in the amount of $532.25, which Debtor paid on June 4, 2007, with check #1004. (Exhibits 5 and 6, Dckt. 128);

6. On or about June 5, 2007, the law firm of Wexler & Wexler, LLC sent a collection letter advising Debtor that an Administrative Judgment had been entered. (Exhibit 7, Dckt. 128).

CITY'S OPPOSITION

The City argues that Debtor points to no pre-petition conduct to support the allegation that the discharge injunction was violated. The City alleges that the Debtor is without any evidence from which the court can conclude the City violated the discharge injunction. The City argues that it has pursued nothing other than post-petition, post-discharge fines imposed upon the Debtor in its exercise of police powers.

The City argues that Debtor has recognized in a variety of pleadings (from the related Adversary Proceeding) that the City's actions were post-petition.

As to the allegations of the City's pre-petition activity, the City argues that the pre-petition collection effort for the removal of an obstruction and repair to a defective house drain pipe was adjudicated and the judgment paid three months before the debtor sought Chapter 13 bankruptcy protection on September 4, 2007. The city states the debtor does not explain the relevance of these allegations to her claim that the City violated the discharge injunction for post-petition, post-discharge debts she incurred later.

The City also states that the violative property conditions, and the fines did not exist at either the filing of Debtor's petition, or at the time of the Debtor's discharge. The City claims it is not in dispute that the City did not begin conducting its investigation, or enforcing the various municipal code violations until after the debtor received her discharge on February 3, 2011. The City argues that its actions to ameliorate the debtor's illegal conduct occurring on her properties,

post-petition and after discharge does not threaten the letter nor the spirit of the bankruptcy laws.

The City alleges that regardless, its collection efforts are exempt from discharge as fines due to government entities. The City cites 11 U.S.C. § 362(b)(4), the police power exemption, that excepts from the automatic stay the commencement or continuation of an action or proceeding by a governmental unity to enforce such governmental unit's police and regulatory power. The city argues that there is no dispute that the City's pursuit of municipal code violations at the debtor's properties was, and is, for the protection of its residents, and to protect public health and safety. The City further alleges that even if the fines had been entered pre-petition or for pre-petition violations, any pre-petition debt composed of fines or penalties payable to a governmental unit would have been excepted from the debtor's discharge under § 523(a)(7).

DEBTOR'S REPLY

Debtor responds to the City's opposition, stating that the pre-petition letters presented evidence actions taken by the City and that the amount claimed by the City could have in fact included these pre-petition claims. Debtor requests that this Motion should be continued to allow discovery as to the material disputed issues.

STANDARD

Motion for Contempt

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506-507.

A contempt proceeding by the United States trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the

permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contempnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contempnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contempnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. *Id.* For the second prong, the court employs an objective test and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contempnor in complying with the order, but whether in fact their conduct complied with the order at issue. *Bassett v. Am. Gen. Fin. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000)(*rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002)).

Automatic Stay and Governmental Entities

Filing a bankruptcy petition operates as a stay, applicable to all entities, of the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor. 11 U.S.C. 362(a)(1); *In re Poule*, 91 B.R. 83, 85 (B.A.P. 9th Cir. 1988). An exception to the stay appears in § 362(b)(4) for the commencement or continuation of an action or proceeding by the governmental unit to enforce such governmental units' police or regulatory powers. *Id.*

There are two tests to determine if the government is acting within the ambit of 11 U.S.C. § 362(b)(4). First test is "pecuniary purpose" test which distinguishes between governmental actions which are aimed at obtaining a pecuniary advantage for the unit in question or its citizens, and those actions which represent a direct application of the unit's police or regulatory powers. *In re Thomassen*, 15 B.R. 907, 909 (9th Cir. BAP 1981). State and local governmental units cannot, by an exercise of their police or regulatory powers, subvert the relief afforded by the federal bankruptcy laws. When they seek to do so for a pecuniary purpose, they are automatically stayed, notwithstanding the exception found at 11 U.S.C. § 362(b)(4). The second test is the "public policy" test. The "public policy" test attempts to distinguish between those proceedings which fulfill a public policy and those which adjudicate private rights." *In re Charter First Mortgage, Inc.*, 42 B.R. 380,383 (Bankr. D. Or. 1984). Under this test, the court considers whether the administrative agency is exercising legislative, executive, or judicial functions. Where the agency's action affects only the parties immediately involved in the proceeding, it is exercising a judicial function and the debtor is entitled to the same

protection from the automatic stay as if the proceeding were being conducted in a judicial form. *Id.* at 383-384. FN.1.

FN.1 The Debtor has provided the court with a letter sent by City of Chicago which indicates that the obligation at issue may be a consumer debt, as that term is defined by the Federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.). Exhibit 20, a June 1, 2012 letter from lawyers who appear to represent the City of Chicago provides the FDCPA notice which is required only for consumer debts (as defined in the FDCPA). This same notice is provided by other "Special Assistant Corporation Counsel," Markoff Krasny, LLC, who sent a series of letters to the Debtor.

Though the Markoff Krasny, LLC letter says, "This firm has been retained by the CITY OF CHICAGO,...I have been retained by the above creditor to collection the balance of your account,...You must make payment or satisfactory arrangement for payment with us to avoid additional collection efforts against you on behalf of our client...;" the letter further states "At this time, no attorney with the firm has personally reviewed the particular circumstances of your account." Exhibit 19, Dckt. 128 at 66. Each of the 11 letter from the City of Chicago through its "Special Assistant Corporation Counsel" makes the same statements (each seeking payment of a different amount) which were sent over 13 month period state that no lawyer serving as the "Special Assistant Corporate Counsel" personally reviewed the "circumstances" for the debtors that the City of Chicago was collecting through its "Special Assistant Corporate Counsel."

Discharge and Governmental Entities

Pursuant to 11 U.S.C. § 524,

> A discharge in a case under this title --
>
> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived

However, 11 U.S.C. § 523(a)(7) provides, "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty..." Whether something is a "fine," a "penalty," or "restitution" as those terms are used in § 523(a)(7) is a question of federal law. In *Taggart*, the Ninth Circuit viewed the central question as whether discipline cost awards are "penal in nature." *State Bar v. Taggert (In re Taggart)*, 249

F.3d 987, 994 (9th Cir. 2001); *Findley v. State Bar (In re Findley),* 387 B.R. 260, 266 (B.A.P. 9th Cir. 2008). Therefore, court must determine whether the debt is penal or compensatory in nature.

In order for a debt to be nondischargeable debt the following four requirements have to be met:

> (1) debt must arise as a punishment or sanction for some type of wrongdoing by the debtor and not merely be an enhanced monetary remedy for what is essentially a breach contract,
>
> (2) debt must not be compensation for actual pecuniary loss;
>
> (3) debt must be payable to a governmental unit; and
>
> (4) debt must be for the benefit of a governmental unit.

See 4 Collier on Bankruptcy P 523.13[3][4] (16th ed. 2013); *In re Taggart*, 249 F.3d at 987.

The key question in assessing nondischargability of a civil liability under section 523(a)(7) is whether the obligation is compensation for actual pecuniary loss, that is, compensation for monetary injury actually incurred. *In re Caggiano*, 34 B.R. 449, 450 (Bankr. D. Mass. 1983). If so, debt is dischargable. *Id.*; 4 Collier on Bankruptcy P 523.13[3] (16th ed. 2013). If penalty "serve[s] some 'punitive' or 'rehabilitative' government aim, rather than a purely compensatory purpose," it satisfies the penal requirement for the nondischarageability of a debt. *Id.; Whitehouse v. Laroche,* 277 F.3d 568, 573 (1st Cir. 2002). As long as government's interest in enforcing debt is penal, it does not matter than the injured persons may thereby receive compensation for pecuniary loss. *United States HUD v. Cost Control Mktg. & Sales Mgmt.*, 64 F.3d 920, 928 (4th Cir. Va. 1995).

In determining whether fine is for benefit of governmental unit under 11 U.S.C. § 523(a)(7), court must consider whether fine imposed is to compensate party who was injured by violation, or to punish party found to be in contempt and to uphold dignity of court; only judgments which are penal in nature and are imposed to uphold dignity of court will be excluded from general discharge; in making determination of whether contempt judgment is actually type included in 11 U.S.C. § 523(a)(7), court must look at totality of circumstances surrounding imposition of fine, and not just whether fine is labeled as civil or criminal contempt. *See Kelly v. Robinson*, 479 U.S. 36, 107 S. Ct. 353 (1986); *In re Gedeon*, 31 B.R. 942, 945 (Bankr. D. Colo. 1983).

DISCUSSION

There appear to be several issues of disputed material fact. First, whether the City had a pre-petition claim. Second, what pre-petition amounts, if any, is the City holding Debtor personally liable for. Third, whether the actions taken by the city prior to the filing of the bankruptcy, if any, render the subsequent actions of the City a violation of the discharge injunction (and warrant civil sanctions). Fourth, if the City's

actions were related to pre-petition claims, and thus subject to the discharge, whether the City's actions are excepted from discharge under 11 U.S.C. § 523(a)(7) (the City raised 11 U.S.C. § 362(b)(4), which appears to apply to the automatic stay, not the discharge injunction, which is the subject of this motion).

From the Motion and Opposition, the court is presented with a Yes It Is (the debt is a pre-petition claim) — No It Isn't (assertion that all of the debts arose post-petition) dispute. What the court cannot tell in simple plain language from the face of the pleadings is when is, and what is the basis of, each debt alleged to exist. The Bankruptcy Code defines a claim as follow.

> (5) The term "claim" means--
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). A "debt" is defined by the Bankruptcy Code, stating, "The term "debt" means liability on a claim." 11 U.S.C. § 101(12).

As is well established, the "claim" arises when the underlying conduct upon which the debt is based occurred, not when the cause of action accrued or when the creditor subsequently sought to enforce the obligation. *Watson v. Parker (In re Parker)*, 313 F.3d 1267 (10th Cir. 2002), *cert. den.*, 540 U.S. 965 (2003); *In re Cool Fuel*, 210 F.3d 999, 1006, (9th Cir. 2000), holding,

> The bankruptcy court has jurisdiction to consider the Board's claim. It is well-established that a claim is ripe as an allowable claim in a bankruptcy proceeding even if it is a cause of action that has not yet accrued. See *In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993); *In re Remington Rand Corp.*, 836 F.2d 825, 831-32 (3d Cir. 1988) (holding that government claim was allowable in bankruptcy proceeding even though claim had not accrued under the Contract Disputes Act of 1978); 11 U.S.C. § 101(5)(A) (defining "claim" as any "right to payment," even if it is "contingent" or "unmatured"); 11 U.S.C. § 502(b)(1) (stating that bankruptcy court "shall determine the amount of [a] claim . . . and allow such claims . . . except to the extent that . . . such claim is unenforceable against the debtor . . . for a reason other than because such claim is contingent or unmatured"); see generally Lawrence P. King, 1 Collier Bankruptcy Manual Par. 101.05[1] at 101-9 & nn. 9,11 (3d ed. 1999) (noting that an allowable claim includes "a cause of

action or right to payment that has not yet accrued or become cognizable").

A claim exists for purposes of the bankruptcy case when "[a] claimant can fairly or reasonably contemplate the claim's existence even fi a cause of action has not yet accrued under nonbankruptcy law." *SNTL Corp. v. Centre Insurance Company,* 571 F.3d 826, 839, (9th Cir. 2009), citing *In re Cool Fuel*.

Before sending the parties to an evidentiary hearing, and possibly dropping on the court less than clear statements identifying the debts and the basis for contending that they are or are not claims, the court affords the parties reasonable discovery. Additionally, the court will set an Pre-Evidentiary Hearing Conference (which is similar to a pre-trial conference), for which the parties shall provide statements of undisputed facts, witnesses, and exhibits for the Evidentiary Hearing.

STATUS CONFERENCE STATEMENT

Debtor filed a status conference statement stating that Debtor has received her Chapter 13 discharge in her Chapter 13 case no. 07-27123-E-13L, Dckt. No. 114. Debtor filed this new Chapter 13 Plan in an attempt to remedy any future claims. Debtor states there is a pending objection to the claims of Fifth Third Bank.

Debtor's counsel states he has called the only party interested in the property in the City of Chicago and has made a cash sale offer to sell, and is awaiting a reply to date. Debtor's counsel has also discussed with the City of Chicago's counsel regarding the pending tax lien on the second property, how to accelerate the tax lien sale process to resolve title transfer in this property, and the willingness to transfer the first property as the claim with the collection process for this property would ultimately result in the tax lien sale.

Debtor states that as the Court continued this matter to afford the parties time to address these issues and work to structure a sale of the propertied at issue, no discovery has been initiated by either party. Debtor asserts that the discovery process should start within (90) days, if nothing further develops to resolve the transfer of title.

Debtor's counsel also suggests that the Bankruptcy Dispute Resolution Program could be initiated to meaningfully resolve these unique issues before the Court allows discovery to begin. Debtor's counsel believes this matter can be resolved through the B.D.R.P. while minimizing future litigation and preserving the Judicial Economy.

No Status Report has been filed by the City of Chicago (and none was ordered by the court). In light of the Status Report filed by Debtor, a Report from the City stating its view of the current status and whether there will be a prompt resolution will be of assistance to the court.

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

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

The Hearing on the Motion to Hold the City of Chicago in Contempt filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 3:00 p.m. on February 11, 2014.

IT IS FURTHER ORDERED that the City of Chicago shall file a Status Report setting forth its position on the status of this Contested Matter, whether it believes a resolution is pending, if mediation or alternative dispute resolution would be of assistance, and a proposed discovery schedule.

25. 10-37627-E-13 JLK-2 ERIC/AMBER BEASLEY James Keenan MOTION TO MODIFY PLAN 12-5-13 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes the plan on the basis that the proposed modified plan no longer provides for secured vehicle purchase money security interest creditor Schools Federal Credit Union, nor does it authorize payments the Trustee has disbursed.

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

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

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

26. 13-20028-E-13 EJS-10 — GREGORY/ELISA WYATT — Eric John Schwab — OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK/MACYS, CLAIM NUMBER 4 — 12-10-13 [88]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Objection to Proof of Claim number 4 of Department Stores National Bank/Macys is overruled without prejudice. No appearance at the January 28, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 4 on the court's official claims registry, asserts $1,768.62 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred on June 1, 2007, and that the charge off date was November 19, 2007.

WITHDRAWAL OF PROOF OF CLAIM

On December 19, 2013, a withdrawal of this Proof of Claim was filed by NCO Financial Systems, Inc. as the authorized agents of DSNB/Macy's pursuant to Federal Rule of Bankruptcy Procedure 3006. This entity, "DSNB/Macy's" is the name of yet another entity which the court cannot identify.

DISCUSSION

There does not appear to be a legal entity designated "Department Stores National Bank/Macys." Department Stores National Bank is a federally insured financial institution. There are nine (9) active corporations and six (6) limited liability companies with "Macy's" in the entity name on the California Secretary of State's website. The court cannot and will not issue orders against entities which do not exist.

While the name "Department Stores National Bank/Macys" appears on the Movant's pleadings, it appears to originate from the Proof of Claim form "Name of Creditor" box. Proofs of Claim. 2, 3, and 4. These proofs of claim appear to be filed by NCO Financial Systems, Inc. In Section 8 of the Proof of Claim Stacy Suire, Operations Manager with NCO Financial Systems, Inc., executes the Proof of Claim as the authorized agent for the creditor.

Conduct to hide the identity of the actual creditor could be inadvertent or part of a comprehensive scheme between NCO Financial Systems, Inc. and its clients to circumvent the *in personam* jurisdiction of this federal court and the Congressional enactments embodied in the Bankruptcy Code.

Therefore, this court will issue an Order to Show Cause for NCO Financial Systems, Inc. to appear and to show cause as to why the court should not conduct an evidentiary hearing concerning the Proof of Claim filed by it stating that the entity "Department Stores National Bank/Macys" is the creditor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is overruled without prejudice.

27. 13-20028-E-13 GREGORY/ELISA WYATT
EJS-11 Eric John Schwab

OBJECTION TO CLAIM OF ASSET ACCEPTANCE LLC, CLAIM NUMBER 5
12-10-13 [93]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

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

The Objection to Proof of Claim number 5 of Asset Acceptance, LLC, is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 5 on the court's official claims registry, asserts $41,128.71 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred on May 31, 2007, and that the charge off date was November 8, 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed

hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer loan, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to be an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the last payment and transaction in the subject claim was May 31, 2007. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established by California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Asset Acceptance, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 5 of Asset Acceptance, LLC is sustained and the claim is disallowed in its entirety.

28. 13-20028-E-13 EJS-12 **GREGORY/ELISA WYATT** **Eric John Schwab** **OBJECTION TO CLAIM OF QUANTUM3 GROUP, LLC, CLAIM NUMBER 12** **12-10-13 [98]**

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 12 of Quantum3 Group, LLC. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 12 on the court's official claims registry, asserts $2,737.30 claim to Quantum3 Group, LLC as agent for MOMA Funding, LLC. A review of the Proof of Service shows that the actual creditor, MOMA Funding, LLC, was not served the motion and supporting pleadings. It appears the Motion was served on the entity and address listed on the proof of claim where notice should be sent to. Furthermore, the address listed is not the address listed with the Washington or Delaware Secretaries of State. Additionally, service does not comply with Federal Rule of Bankruptcy Procedure 7004(b), as it is not addressed to an officer. Where the actual creditor to whom the debtor owes the money or property is not sent proper notice, the court cannot grant the relief requested.

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Quantum3 Group, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 12 of Quantum3 Group, LLC is overruled without prejudice.

29. 13-20028-E-13 GREGORY/ELISA WYATT
EJS-13 Eric John Schwab
OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 16
12-10-13 [103]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

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

The Objection to Proof of Claim number 16 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 16 on the court's official claims registry, asserts $16,483.70 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2008, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred on March 7, 2008, and that the charge off date was March 7, 2008.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer loan, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to be an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the last payment and transaction in the subject claim was March 7, 2008. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

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

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

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

The Objection to Claim of Jefferson Capital Systems, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 16 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety.

30. 13-20028-E-13 EJS-14 GREGORY/ELISA WYATT Eric John Schwab

OBJECTION TO CLAIM OF AMERICAN EXPRESS BANK, FSB, CLAIM NUMBER 17
12-10-13 [108]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

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

The Objection to Proof of Claim number 17 of American Express Bank, FSB is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 17 on the court's official claims registry, asserts $12,984.13 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred in April 2007, and that the charge off date was in November 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer loan, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to be an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the last payment and transaction in the subject claim was in April 2007. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

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

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

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

The Objection to Claim of American Express Bank, FSB filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 17 of American Express Bank, FSB is sustained and the claim is disallowed in its entirety.

31. 13-20028-E-13 EJS-2 | **GREGORY/ELISA WYATT** | **Eric John Schwab** | **OBJECTION TO CLAIM OF QUANTUM3 GROUP, LLC, AS AGENT FOR FORTIS CAPITAL, LLC, CLAIM NUMBER 9 12-10-13 [48]**

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

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

The Objection to Proof of Claim number 9 of Quantum3 Group, LLC, as Agent for Fortis Capital, LLC is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 9 on the court's official claims registry, asserts $19,624.64 claim. FN.1. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

FN.1. The court notes that Debtor names the Creditor as Quantum3 Group, as agent for Fortis Capital, LLC. A review of the proof of claim shows the Name of Creditor as Quantum3 Group, as agent for Fortis Capital, LLC, with the attachments shows the Current Creditor/Assignee/Assignor as Fortis Capital, LLC. Debtor has properly served the address listed on the Louisiana Secretary of State website for the actual creditor, Fortis Capital, LLC.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor does not indicate when the last payment on the account occurred, but that the charge off date was December 17, 2007.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

Section 337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Creditor indicates that the basis for the claim is a consumer loan, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment. Creditor does not appear to be an open book account as defined in California Code of Civil Procedure § 337a.

It appears that the date of the charge off of the subject claim was December 17, 2007. Creditor is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established California Code of Civil Procedure § 337 has expired. Creditor was properly served and has not filed an opposition or otherwise provided an exception to the statute of limitations. Because it has been more than four years since the last

payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts in California.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Fortis Capital, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 9 of Fortis Capital, LLC is sustained and the claim is disallowed in its entirety.

32. 13-20028-E-13 GREGORY/ELISA WYATT — OBJECTION TO CLAIM OF CAVALRY PORTFOLIO SERVICES, LLC, CLAIM NUMBER 1
EJS-3 Eric John Schwab — 12-10-13 [53]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 1 of Cavalry Portfolio Services, LLC. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 1 on the court's official claims registry, asserts $29,095.09 claim to Cavalry Portfolio Services, LLC. A review of the Proof of Service shows the Motion was served on the entity and address listed on the proof of claim where notice should be sent to. However, the "notice address" is not the required service of process address when the debtor seeks to litigate with the creditor.

The address used by the Debtor, which is the notice address on the Proof of Claim, is not the address listed with the California (or New York) Secretary of State for the creditor and service was not made on the agent for service of process for the Creditor. Furthermore, service does not comply with Federal Rule of Bankruptcy Procedure 7004(b), as it is not addressed to an officer. When the actual creditor to whom the debtor owes the money or property is not properly served, the court cannot grant the relief requested.

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Cavalry Portfolio Services, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 1 of Cavalry Portfolio Services, LLC is overruled without prejudice.

33. 13-20028-E-13 EJS-4 — GREGORY/ELISA WYATT — Eric John Schwab — OBJECTION TO CLAIM OF PORTFOLIO INVESTMENTS II, LLC, CLAIM NUMBER 24 — 12-10-13 [58]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 24 of Portfolio Investments II, Inc. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 24 on the court's official claims registry, asserts $1,603.76 claim to Portfolio Investments II, Inc. A review of the Proof of Service shows that this creditor was not served the motion and supporting pleadings. It appears the Motion was served on Recovery Management Systems Corp, the entity which filed the Proof of Claim form for the Creditor. There is nothing to indicate that Recovery Management Systems, Corp. is the agent for service of process for this creditor. Where the actual creditor to whom the debtor

owes the money or property is not served with the pleadings, the court cannot grant the relief requested.

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Portfolio Investments II, Inc. filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 24 of Portfolio Investments II, Inc. is overruled without prejudice.

34. 13-20028-E-13 EJS-5 GREGORY/ELISA WYATT Eric John Schwab OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 21 12-10-13 [63]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other creditors, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 21 of LVNV Funding, LLC. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 21 on the court's official claims registry, asserts $1,603.76 claim to LVNV Funding, LLC. A review of the Proof of Service shows that this creditor was not served the motion and supporting pleadings. It appears the Motion was served on Resurgent Capital Services, the entity which filed the Proof of Claim form for the Creditor. There is nothing to indicate that Resurgent Capital Services is the agent for service of process for this creditor. Where the actual creditor to whom the debtor owes the money or property is not served with the pleadings, the court cannot grant the relief requested. Additionally, the pleadings were sent to a Post Office Box.

Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 21 of LVNV Funding, LLC is overruled without prejudice.

35. 13-20028-E-13 EJS-6 GREGORY/ELISA WYATT Eric John Schwab

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 22 12-10-13 [68]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other creditors, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 22 of LVNV Funding, LLC. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 22 on the court's official claims registry, asserts $2,635.59 claim to LVNV Funding, LLC. A review of the Proof of Service shows that this creditor was not served the motion and supporting pleadings. It appears the Motion was served on Resurgent Capital Services, the entity which filed the Proof of Claim form for the Creditor. There is nothing to indicate that Resurgent Capital Services is the agent for service of process for this creditor. Where the actual creditor to whom the debtor owes the money or property is not served with the pleadings, the court cannot grant the relief requested. Additionally, the pleadings were sent to a Post Office Box.

Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 22 of LVNV Funding, LLC is overruled without prejudice.

36. 13-20028-E-13 EJS-7 — GREGORY/ELISA WYATT — Eric John Schwab — OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 20 — 12-10-13 [73]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other creditors, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to overrule without prejudice the Objection to Proof of Claim number 20 of LVNV Funding, LLC. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 20 on the court's official claims registry, asserts $675.31 claim to LVNV Funding, LLC. A review of the Proof of Service shows that this creditor was not served the motion and supporting pleadings. It appears the Motion was served on Resurgent Capital Services, the entity which filed the Proof of Claim form for the Creditor. There is nothing to indicate that Resurgent Capital Services is the agent for service of process for this creditor.

Where the actual creditor to whom the debtor owes the money or property is not served with the pleadings, the court cannot grant the relief requested. Additionally, the pleadings were sent to a Post Office Box.

Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.*), 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Based on improper service and notice, the Objection to the Proof of Claim is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of LVNV Funding, LLC filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 20 of LVNV Funding, LLC is overruled without prejudice.

37. 13-20028-E-13 EJS-8 GREGORY/ELISA WYATT Eric John Schwab

OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK/MACYS, CLAIM NUMBER 2 12-10-13 [78]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Objection to Proof of Claim number 2 of Department Stores National Bank/Macys is overruled without prejudice. No appearance at the January 28, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 2 on the court's official claims registry, asserts $1,940.00 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred on June 1, 2007, and that the charge off date was January 2, 2008.

WITHDRAWAL OF PROOF OF CLAIM

On December 19, 2013, a withdrawal of this Proof of Claim was filed by NCO Financial Systems, Inc. as the authorized agents of DSNB/Macy's pursuant to Federal Rule of Bankruptcy Procedure 3006. This entity, "DSNB/Macy's" is the name of yet another entity which the court cannot identify.

DISCUSSION

There does not appear to be a legal entity designated "Department Stores National Bank/Macys." Department Stores National Bank is a federally insured financial institution. There are nine (9) active corporations and

six (6) limited liability companies with "Macy's" in the entity name on the California Secretary of State's website. The court cannot and will not issue orders against entities which do not exist.

While the name "Department Stores National Bank/Macys" appears on the Movant's pleadings, it appears to originate from the Proof of Claim form "Name of Creditor" box. Proofs of Claim. 2, 3, and 4. These proofs of claim appear to be filed by NCO Financial Systems, Inc. In Section 8 of the Proof of Claim Stacy Suire, Operations Manager with NCO Financial Systems, Inc., executes the Proof of Claim as the authorized agent for the creditor.

Conduct to hide the identity of the actual creditor could be inadvertent or part of a comprehensive scheme between NCO Financial Systems, Inc. and its clients to circumvent the in personam jurisdiction of this federal court and the Congressional enactments embodied in the Bankruptcy Code.

Therefore, this court will issue an Order to Show Cause for NCO Financial Systems, Inc. to appear and to show cause as to why the court should not conduct an evidentiary hearing concerning the Proof of Claim filed by it stating that the entity "Department Stores National Bank/Macys" is the creditor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is overruled without prejudice.

38. 13-20028-E-13 GREGORY/ELISA WYATT — OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK/MACYS, CLAIM NUMBER 3
EJS-9 Eric John Schwab — 12-10-13 [83]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 49 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Objection to Proof of Claim number 3 of Department Stores National Bank/Macys is overruled without prejudice. No appearance at the January 28, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 3 on the court's official claims registry, asserts $1,998.32 claim. The Debtor objects to the Proof of Claim on the basis that the statute of limitations has run on the claim pursuant to California Code of Civil Procedure § 337. Debtor asserts that the account is based on credit activity in 2007, at which point the account was charged-off. Debtor asserts that no lawsuit was filed by this creditor, nor was a judgment ever entered against the Debtors.

Debtor further contends that Creditor has not provided any additional evidence that later efforts to collect the debt were made and that on the creditor's proof of claim, the creditor indicates that the last payment on the account occurred on June 1, 2007, and that the charge off date was November 13, 2007.

WITHDRAWAL OF PROOF OF CLAIM

On December 19, 2013, a withdrawal of this Proof of Claim was filed by NCO Financial Systems, Inc. as the authorized agents of DSNB/Macy's pursuant to Federal Rule of Bankruptcy Procedure 3006. This entity, "DSNB/Macy's" is the name of yet another entity which the court cannot identify.

DISCUSSION

There does not appear to be a legal entity designated "Department Stores National Bank/Macys." Department Stores National Bank is a federally insured financial institution. There are nine (9) active corporations and

six (6) limited liability companies with "Macy's" in the entity name on the California Secretary of State's website. The court cannot and will not issue orders against entities which do not exist.

While the name "Department Stores National Bank/Macys" appears on the Movant's pleadings, it appears to originate from the Proof of Claim form "Name of Creditor" box. Proofs of Claim. 2, 3, and 4. These proofs of claim appear to be filed by NCO Financial Systems, Inc. In Section 8 of the Proof of Claim Stacy Suire, Operations Manager with NCO Financial Systems, Inc., executes the Proof of Claim as the authorized agent for the creditor.

Conduct to hide the identity of the actual creditor could be inadvertent or part of a comprehensive scheme between NCO Financial Systems, Inc. and its clients to circumvent the in personam jurisdiction of this federal court and the Congressional enactments embodied in the Bankruptcy Code.

Therefore, this court will issue an Order to Show Cause for NCO Financial Systems, Inc. to appear and to show cause as to why the court should not conduct an evidentiary hearing concerning the Proof of Claim filed by it stating that the entity "Department Stores National Bank/Macys" is the creditor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is overruled without prejudice.

39. 10-43729-E-13 ROBERT/LINDALEE LAURENT MOTION TO MODIFY PLAN
MTM-3 Michael McEnroe 12-20-13 [60]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation offering evidence that the Debtor is $549.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the Motion to Confirm does not comply with Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which relief is based.

Additionally, the Trustee states that Debtor's modified plan proposes to add the Internal Revenue Service as a priority claim for post-petition tax liabilities in the amount of $1,600.00. The Declaration provided by the Debtor sates they are adding an additional priority claim for unpaid taxes from 2012 in the amount of $2,500.00. The Trustee objects that the amount of the claim is inconsistent between the Declaration and the plan. Further, the plan calls for a post-petition tax claim to be paid without a proof of claim: the creditor has not filed one and Debtor does not have the ability to file one pursuant to 11 U.S.C. § 1305.

Lastly, the Trustee states the Debtor's confirmed plan provides for Bank of America as a Class 4 secured claim paid directly by Debtor regarding Debtor's residence. The proposed plan no longer provides for this creditor and the Trustee is uncertain of the treatment.

FAILURE TO STATE GROUNDS WITH PARTICULARITY

The Motion to Confirm states with particularity the following grounds upon which confirmation of the proposed Plan is based:

a. Debtors seek confirmation of their Second Amended Chapter 13 Plan.

b. The Basis for Debtors' motion is set forth in Debtors' Declaration and Second Amended Plan, supporting this motion.

Motion, Dckt. 60.

the Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

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

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

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

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

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

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

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

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted

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

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed. Movant fails to state grounds upon which the requested relief, confirmation of a Chapter 13 Plan, can be granted. The Motion is also denied on those grounds.

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

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

40. 14-20032-E-13 KULWINDER SINGH **MOTION TO EXTEND AUTOMATIC STAY**
SAC-1 Scott A. CoBen **1-6-14 [10]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 6, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the Court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 13-30204-A-13J) was dismissed on December 20, 2013, after Debtors were unable to confirm a plan because they could not pass liquidation due to a preference payment. *See* Order, Bankr. E.D. Cal. No. 13-30204-A-13J, Dckt. 28, December 20, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the*

Bankruptcy Code, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides testimony that he has the ability to pay the plan payment in the case. Debtor states he was unable to increase his plan payment in the prior case because he could not afford it due to a preference payment made to his girlfriend (which the court found to be an insider). Debtor testifies that they have filed a confirmable plan and filed the petition in good faith.

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

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

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

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

41. 10-40834-E-13 PGM-2 — PAUL COSTA AND KAROLYN COLE — Peter G. Macaluso — MOTION TO APPROVE LOAN MODIFICATION — 12-18-13 [54]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve Loan Modification was not properly set for hearing on the notice require by Local Bankruptcy Rule 9014(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to continue the hearing on the Motion to Approve Loan Modification to 3:00 p. m. on January 25, 2014, to allow Ocwen Loan Servicing, LLC to provide evidence that it is the creditor or that it is authorized to modify the terms of this loan as the named principal. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Ocwen Loan Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to $955.39. A review of the Loan Modification (attached as Exhibit A) shows that Ocwen Loan Servicing, LLC is named as the "Lender" on the loan. Dckt. 57. Proof of Claim No. 12, filed by Onewest Bank, FSB, shows a secured claim on the subject real property. The court notes an Unconditional Transfer of Claim after Proof of Claim filed 11/23/2010 was filed on November 21, 2013, showing a transfer of claim to Ocwen Loan Servicing, LLC. Dckt. 48. The Assignment appears to be signed by Ocwen Loan Servicing, LLC's attorney, Kristin A. Zilberstein. However, this is not evidence of the real creditor or lender.

The court is not certain how Ocwen Loan Servicing, LLC, can name themselves as "Lender" in a Loan Modification for an obligation that appears to be owed to Onewest Bank, FSB. The court will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Onewest Bank, FSB.

The court has now been presented with multiple instances of different loan servicing companies misrepresenting to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each case the loan servicing company was merely

that, an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor.

The court will issue an order to Debtors and Ocwen Loan Servicing, LLC to file on or before February 14, 2014, any and all properly authenticated documents identifying that Ocwen Loan Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). The court continues the hearing to 3:00 p.m. on January 25, 2014, to allow the parties to file the appropriate documentation. FN.1.

FN.1. As a reference for the parties, this court has previously addressed with another servicing company, Green Tree Servicing, LLC, the requirement to accurately identify the status of the party in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111. In addition, Specialized Loan Servicing, LLC and U.S. Bank, N.A. have also addressed this issue. The servicers and this bank have altered their practices and are not improperly listing or identifying the loan servicing company as the creditor when it is not a creditor as defined by 11 U.S.C. § 101(10).

The court acknowledges that Ocwen Loan Servicing, LLC has, and most likely will, in connection with this matter be responsive and address the court's concerns – as well as educating the court to the current practical business issues, and challenges, of maintaining a nationwide business providing these types of services. However, it appears that the impact of these changes is limited or fleeting.

Further, if Ocwen Loan Servicing, LLC has expanded its business to purchase notes, it should address how it will provide that information to the federal courts.

The court shall issue an order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on February 25, 2014.
>
> **IT IS FURTHER ORDERED** that Debtors and Ocwen Loan Servicing, LLC shall file on or before February 14, 2014, any and all properly authenticated documents identifying that Ocwen Loan Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10).
>
> **IT IS FURTHER ORDERED** that Ocwen Loan Servicing, LLC shall file and serve on or before February 25, 2014, properly authenticated documents, if any, by which it may assert to be the agent of or be granted a power of attorney for Onewest Bank, FSB or any other person who is the actual creditor in this case, and any other documents by which Ocwen Loan Servicing, LLC purports to be authorized or have the right to modify the loan at issue.
>
> The Clerk of the court shall serve Ocwen Loan Servicing, LLC copies of this order at the following addresses:
>
> Ocwen Loan Servicing, LLC
> C/O CSC - Lawyers Incorporating Service
> Agent for Service of Process
> 2711 Centerville Road
> Wilmington, DE 19808
>
> Ocwen Loan Servicing, LLC
> Attn: Officer or Agent for Service of Process
> 1661 Worthington Road, Suite 100
> West Palm Beach, FL 33409
>
> Ocwen Loan Servicing, LLC
> Attn: Officer or Agent for Service of Process
> Bankruptcy Department
> 110 Virginia Drive, Suite 175
> Fort Washington, PA 19034

Ocwen Loan Servicing, LLC
Kristin A. Zilberstein, Esq.
C/o McCarthy & Holthus, LLP
1770 Fourth Avenue
San Diego, CA 92101

Ocwen Loan Servicing, LLC
Attn: Office or Agent for Service of Process
Payment Processing
3451 Hammond Avenue
Waterloo, IA 50702

42. 13-27835-E-13 JEFFREY/MONICA JACKSON
TSB-1 Ronald W. Holland

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
7-18-13 [27]

CONT. FROM 10-22-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 18, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral. The court

having denied the motion to value collateral without prejudice, the court sustains the Trustee's objection on this basis.

The Trustee also objects on the basis that the plan is not the Debtor's best effort, as the monthly unemployment income of $1,950.00 is listed for Monica Jackson, when Debtor testified at the First Meeting of Creditors that she is now working and earning a gross income of approximately $3,000.00 per month. Trustee argues that Debtors have additional income which should be paid into the plan.

Lastly, the Trustee states that Debtors' Schedule J fails to list expenses for property taxes and insurance. Trustee states Debtors testified that the property taxes are included in the mortgage payment, but the insurance is paid separately and amounts to $700.00 per year, which is not included in their budget.

CONTINUANCE

The court continued the hearing to allow the Debtor to continue making plan payments under the current proposed plan while filing an objection to claim and formulating a new plan given the claims filed in this case.

The Debtor filed an objection to claim, which the court set for an evidentiary hearing. The parties filed a stipulation, agreeing to withdraw the Objection to Proof of Claim and Creditor Central Mortgage Company agreed to amend its proof of claim to list the agreed-upon arrearage of $53,587.09. The court signed the order on December 26, 2013. Dckt. 99.

It does not appear this plan provides for the agreed-upon arrearage or addresses the Trustee's other concerns. Therefore, the objection is sustained.

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

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

43. 12-38038-E-13 RICHARD/KATHLEEN THOMPSON MOTION TO MODIFY PLAN
BB-4 Bonnie Baker 12-13-13 [60]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes the motion on the basis that he is uncertain whether the claim Janet Cowan/spousal support qualifies as a Class 4 secured claim. The creditor has filed Proof of Claim No. 10 as a Class 5 priority claim for $350.00 per month. The Trustee notes that Schedule I reflects a $350.00 garnishment.

DISCUSSION

Class 4 claims include all secured claims paid directly by the Debtor or a third party. These claims mature after the completion of the plan, are not in default and are not modified by the plan. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract. *See* Form Plan EDC 3-080.

Debtor listed Janet Cowan/spousal support as a Class 4 claim in the proposed plan with a monthly contract installment of $350.00 to be made by the Debtor. Dckt. 65.

Janet Cowan filed Proof of Claim No. 10 on February 5, 2013, for a priority claim pursuant to 11 U.S.C. § 507(a)(1) for $350.00 per month. Proof of Claim No. 10. In support of the proof of claim, Janet Cowan filed an "Order on Notice of Motion to Set Aside; Order in Re Permanent Spousal

Support; Order in Re Child Support," which states that Debtor shall pay Cowan for permanent spousal support the sum of $350.00 per month, commencing December 1, 2005, due and payable on the first day of each month until modified by the court or terminated by operation of law. Proof of Claim No. 10.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Here, no objection has been made to the amount or type of claim filed. Therefore, the proof of claim is prima facie valid. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). The claim is therefore designated a priority claim and must be included in Class 5 of the plan (consisting of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507). *See* Form Plan EDC 3-080.

Based on the foregoing, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

44. 13-27044-E-13 KEVIN/BREE SEARS
DBJ-2 Douglas B. Jacobs

CONTINUED MOTION TO CONFIRM PLAN
10-21-13 [57]

CONT. FROM 12-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Creditor Cory Adams objects to confirmation of the Debtors' Second Amended Plan on the basis of good faith. Creditor states that Debtors' income has increased and the Debtors' expenses have decreased to an amount exactly equal to their proposed plan payment under the plan which pays zero to the general unsecured claims. Creditor states his claim is a general unsecured claim, totaling nearly one-half of the entire amount of unsecured debt. Creditor states he has filed an adversary proceeding to determine that the amounts owed to him are non-dischargeable.

Debtor responds, stating that they filed an amended plan to account for all of the taxes due and allowing for the payment to their mortgage company for ongoing mortgage and all the arrears. In order to make these payments, Debtors state they reduced their monthly food bill, plan on bringing lunch to work, reduce eating out expenses and buying less expensive food. Debtor states that being faced with larger mortgage arrears and tax obligations, he has taken on more work as a public defender and private defense attorney to supplement his income. Debtor states the plan is feasible. Debtor also states that the adversary complaint referenced by Creditor is being litigated and if Creditor is successful, the plan will be modified or the case will be dismissed.

Based on the declaration providing explanations for the change in income and expenses, the court overrules the Creditor's objections. Merely because a debtor dials down otherwise realistic expenses to a lower "battlefield" level which are necessary to make a plan work does not render the expenses not being stated in good faith. Though the court has no idea why the Debtors are filing amended Schedules I and J, Dckt. 63, for post-petition changes in income and expenses, the court will not deny confirmation on those grounds. (Though it could be argued that the Debtors misstating under penalty of perjury post-petition income and expenses as being the income and expenses as of the commencement of this case renders all of the Debtors' testimony unreliable – this Creditor and the Debtor have a bigger fight over the dischargeability of the claim.)

The adversary proceeding appears to be litigating the non-dischargeability of the Creditor's claim and if Creditor is successful, his claim will survive the bankruptcy plan and discharge.

CONTINUANCE

The court continued the hearing to allow Debtors to present discovery regarding income and contract with the creditor.

No additional pleadings have been filed and the court has not been presented with evidence of the Debtors' current income and expenses.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

45. 13-36044-E-13 MARTINA RUIZ
CLH-1 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
12-27-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 27, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Here, the respondent creditor filed the Opposition 12 days prior to the hearing on January 16, 2014.

The court's tentative decision is to continue the hearing on the Motion to 3:00 p.m. on March 11, 2014. Opposition pleadings shall be filed and served on or before February 25, 2014. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8208 B and R Lane, Rio Vista, California. The Debtor seeks to value the property at a fair market value of $180,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

LATE FILED OPPOSITION

Bank of America, N.A. filed an opposition requesting additional time to supplement the record with its own appraisal report of the subject property. However, the Opposition was filed 12 days prior to the hearing on January 16, 2014. According to Local Bankruptcy Rule 9014-1(f)(1)(ii), the opposition is due on January 14, 2014. While late, it was 12 days prior to the hearing. Because it is common to continue hearings on motions to value claims to allow the creditor, and debtor if necessary, to obtain third-party appraisals as part of their discovery, the lateness is not of prejudice. (The court also notes that creditor acknowledge that the pleading was late, expressly stating such in the title of the Opposition.)

DISCUSSION

The first deed of trust secures a loan with a balance of approximately $231,481.63. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $28,774.51. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to March 11, 2014. Bank of America, N.A. shall file and serve its supplemental opposition pleadings and evidence on or before February 25, 2014.

46. 14-20045-E-13 TUBAYA/DEBORAH CARTER — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 1-13-14 [16]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the Court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 13-22961-B-13J) was dismissed on December 9, 2013, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 13-22961-B-13J, Dckt. 85, December 9, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider

many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor testifies that she was unable to maintain her mortgage payments but has since obtained a loan modification which allows her to make her payments and keep her home. Debtor testifies that they have filed a confirmable plan and filed the petition in good faith.

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

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

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

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

47. 10-34651-E-13 CHRISTOPHER/LEANNE RAE MOTION TO SELL
SAC-1 Scott A. CoBen 12-20-13 [33]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion to Sell Property, and order that the Chapter 13 Trustee hold the proceeds of sale pending further order of the court. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 2765 Clay Street, Sacramento, California. The sales price is $72,000.00 and the named buyer is Eddie Amuneke. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 36.

TRUSTEE'S OPPOSITION

Trustee objects requesting the net proceeds due the Debtor from the motion to sell the real property be turned over to the Trustee as not scheduled, non-exempt property of the estate, to be held pending further order of the court. Debtor states that he will use his portion to purchase a new vehicle.

The Trustee states that the Debtor ignores that inheritances are part of the estate in every bankruptcy if received within 180 days of filing; that in Chapter 13 cases, estate property is expanded to include all property of the kind specified in section 541 and acquired before the case is closed, dismissed or converted; and the Debtor has an ongoing obligation to file a supplemental schedule to reflect property received or expected to be received.

Trustee states the Debtor has not filed a supplemental schedule and that the inheritance is and will remain property of the estate. The Trustee states he does not oppose the sale of the property at the terms specified, except that the funds due to the Debtor should be turned over to the Trustee pending further order of the Court.

DEBTOR'S RESPONSE

Debtors respond, stating that they have now scheduled and exempted this property but dispute that it is property of the estate. Debtors cite to nonbinding authority and argue that section 1306 carries with it the temporal 180 day time frame from section 541.

TRUSTEE'S REPLY

The Trustee states again he is not opposed to the sale but objects to the proposal that the proceeds shall be turned over to the Debtor. The Trustee agrees that there is no binding Ninth Circuit authority controlling but cites the recent Fourth Circuit decision, *Carroll v. Logan*, 735 F.3d 147 (4th Cir. 2013).

DISCUSSION

The court recognizes a unique relationship between section 541 and section 1306. The Filing of a bankruptcy petition creates a bankruptcy estate containing all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). Furthermore, section 541(a)(5)(A) states that property of the estate includes,

> (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date —
>
> (A) by bequest, devise, or inheritance . . . .

11 U.S.C. § 541(a)(5)(A). This provision "applies to interests acquired postpetition where the measuring death occurs between the filing of the bankruptcy petition and the termination of the one hundred and eighty (180) day period." *Chappel v. Proctor (In re Chappel)*, 189 B.R. 489, 494 (9th Cir. B.A.P. 1995).

In a Chapter 13 case, section 541(a) is supplemented by section 1306(a), which expands the scope of the bankruptcy estate. The section provides,

> (a) Property of the estate includes, **in addition** to the property specified in section 541 --
>
> (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 [the Code], whichever occurs first...

11 U.S.C. § 1306(a) (emphasis added). The Ninth Circuit has not determined the issue of whether an inheritance which postdates the bankruptcy petition by more than 180 days is property of the bankruptcy estate.

However, the Fourth Circuit recently discussed the relationship between section 541(a) and section 1306(a) and held that 1306(a) plainly extends the timeline for including the kind of property specified in section 541 in Chapter 13 bankruptcy estates and affirmed the bankruptcy court's inclusion of the inheritance in the chapter 13 bankruptcy estate. *Carroll v. Logan*, 735 F.3d 147, 149 (4th Cir. 2013). As the court explained,

> Congress has harmonized these two statutes for us. With Section 541, Congress established a general definition for bankruptcy estates. With Section 1306, it then expanded on that definition specifically for purposes of Chapter 13 cases. Thus, "Section 1306 broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case." S. Rep. No. 95-989, at 140-41 (1978).
>
> The statutes' plain language manifests Congress's intent to expand the estate for Chapter 13 purposes by capturing the types, or "kind," of property described in Section 541 (such as bequests, devises, and inheritances), but not the 180-day temporal restriction. 11 U.S.C. § 1306(a). This is because "[t]he kind of property is a distinct concept from the time at which the debtor's interest in the property was acquired." In re Tinney, 07-42020-JJR13, 2012 Bankr. LEXIS 3092, 2012 WL 2742457, at *2 (Bankr. N.D. Ala. July 9, 2012). And on its face, Section 1306(a) incorporates only the kind of property described in Section 541 into its expanded temporal framework.

Id. at 150. The court further explained,

> Section 1306's extension of a Chapter 13 bankruptcy estate's reach until the Chapter 13 case is closed, dismissed, or converted constitutes "a rational response to the relevant situation." Salomon Forex, 8 F.3d at 975. Chapter 13 proceedings provide debtors with significant benefits: For example, debtors may retain encumbered assets and have their defaults cured, while secured creditors have long-term payment plans imposed upon them and unsecured creditors may receive payment on only a fraction of their claims. See 11 U.S.C. §§ 1322, 1325...
>
> In exchange for those benefits, a Chapter 13 debtor makes a multi-year commitment to repay obligations under a court-confirmed plan. Id. The repayment plan remains subject to modification for reasons including a debtor's decreased

> ability to pay according to plan, as well as the debtor's increased ability to pay. See 11 U.S.C. § 1329. As we have stated before, "[w]hen a [Chapter 13] debtor's financial fortunes improve, the creditors should share some of the wealth." In re Arnold, 869 F.2d 240, 243 (4th Cir. 1989)...

Id. at 151. This court recognizes there are other courts that have held that property inherited more than 180 days post-petition is not property of the estate, but finds these cases are not persuasive and not binding on this court. FN.1.

FN.1. See In re Key, 465 B.R. 709, 712 (Bankr. S.D. Ga. 2012); In re Walsh, 07-60774, 2011 Bankr. LEXIS 2602, 2011 WL 2621018, at *2 (Bankr. S.D. Ga. June 15, 2011); and In re Schlottman, 319 B.R. 23, 24-25 (Bankr. M.D. Fla. 2004).

The court does not purport to decide whether this property is property of the estate. However, a serious issue exists. While approving the sale, the court requires that the proceeds be held by the Chapter 13 Trustee, with any and all rights of the Debtors in and to the Property attaching to the proceeds of sale.

HEARING

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the overbids were presented in open court as stated on the record.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Christopher and Leanne Rae the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Christopher and Leanne Rae, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Eddie Amuneke or nominee ("Buyer"), the Property commonly known as 2765 Clay Street, Sacramento, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for 72,000.00, on the terms and conditions set forth in the Purchase

Agreement, Exhibit A, Dckt. 36, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Chapter 13 Debtor be and hereby is authorized to pay a real estate broker's commission in an amount not to exceed six percent (6%) of the actual purchase price upon consummation of the sale.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

6. All monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow, with all rights and interests in and to the Property of the Debtors and the Estate attaching to said proceeds. No disbursement of the proceeds held by the Trustee shall be made except upon further order of this court.

48. 12-37353-E-13 TOG-9 | **JORGE VARELA AND LILIA ORTIZ**
Thomas O. Gillis | **OBJECTION TO CLAIM OF INVESTMENT RETRIEVERS, INC, CLAIM NUMBER 28**
12-11-13 [52]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. That requirement was met.

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

The Objection to Proof of Claim number 16 of Investment Retrievers, Inc. is overruled without prejudice. No appearance is required.

The Proof of Claim at issue, listed as claim number 16 on the court's official claims registry, asserts $24,052.89 claim. Debtor objects to the Proof of Claim on the basis that it was not timely filed. *See* Fed. R. Bankr. P. 3002(c).

The Proof of Service, filed along with Debtors' Objection, suffers from two defects. First, Federal Rule of Bankruptcy Procedure 7004(h)(1)(B) requires that service to a corporation, partnership, or association must be served by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process, and -- if the agent is one authorized by statute and the statute so requires -- by also mailing a copy of each to the defendant. Fed. R. Bankr. P. 7004(h)(1)(B).

Investment Retrievers, Inc. is listed as a corporation on the California Secretary of State Website. California Secretary of State Business Entity Detail, Investment Retrievers, Inc. (January 27, 2014, 11:12 AM), http://kepler.sos.ca.gov. Thus, Federal Rule of Bankruptcy Procedure 7004(h)(1)(B) requires that the objection be served and addressed to the attention of an officer or other agent authorized to receive service of process. The certificate of service for this motion, Dckt. No. 54, does not

indicate that service was made to a specific representative or agent for service.

Second, the Objection appears to have been served to the PO Box of Investment Retrievers, Inc. Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Debtors' service to the Claimant's PO Box address is not in compliance with the statutory requirements of service. Thus, service has not been completed on respondent Claimant, and the Objection is overruled on this basis.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 16 of Investment Retrievers, Inc. is overruled without prejudice.

49. 10-23357-E-13 OSCAR/SELMA ROMERO
EJS-9 Eric John Schwab

OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 5
12-11-13 [166]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. That requirement was met.

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

The Objection to Proof of Claim number 5 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 5 on the court's official claims registry, asserts $38,219.65 claim. The Debtor objects to the Proof of Claim on the basis that Debtors's residence, which secured the debt owed to Claimant, has already been foreclosed.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtors filed their Chapter 13 case on January 2010, and their plan was confirmed on May 16, 2011. After auditing the claims register, Debtors noticed that Claim No. 5, the claim of Bank of America, National Association as successor by merger to the LaSalle Bank National Association, as Trustee

for Certificateholders of Bear Stearns Asset Backed Securities I LLC, Mortgage Backed-Certificates, Series 2006-3, had filed a secured claim in the amount of $38,219.65. This claim purports to be for a deed of trust on 1009 Comfort Drive, Forney, Taxes.

Debtors state that while they previously owned this property, their residence was foreclosed on August 5, 2008, over a year before the filing of their chapter 13 case. Debtors disclosed this foreclosure on their Statement of Financial Affairs. Question #5 on Debtors' Statement of Financial Affairs reflects that the subject property was foreclosed on August 5, 2008, and that the creditor at the time was ASC in Los Angeles. Exhibit B, Dckt. No. 169. Debtors' Counsel claims that he has repeatedly and unavailingly tried to contact the firm that filed the Proof of Claim, leading to the filing of this objection.

WITHDRAWAL OF CLAIM

On January 14, 2014, Bank of America, N.A. filed a Notice of Withdrawal of Proof of Claim No. 5. This withdrawal renders Debtors' objection moot.

Because the real property that is the subject of creditor's claim has been foreclosed, and given that Claimant has only belatedly filed a withdrawal of the claim at issue, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Bank of America, N.A. filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim number 5 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

50. 11-32857-E-13 HIAWATHA HUSBAND — MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso — 12-11-13 [63]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Trustee has filed opposition to confirmation of the Plan on the following grounds:

1. Debtor is delinquent $50.00 under the proposed plan. The case was filed on May 23, 2011, and 31 payments have become due under the plan. Payments totaling $18,843.00 through November 2013, and $150.00 for six months starting on December, 2013, will be due. Debtor has paid the Trustee $18,943.00 with the last payment of $100.00 posted on January 2, 2014.

2. Trustee is objecting to the treatment of Class 5 priority creditor, County of Sacramento. Debtor is proposing to reclassify priority creditor to Class 3 surrender. Under the confirmed Plan, the County of Sacramento is listed as a Class 5 Priority Creditor (Dckt. No. 5). Debtor's attorney's office filed a priority claim (Court Claim NO. 21-1) on behalf of this creditor on March 22, 2012, in the amount of $4,000.00.

3. Debtor proposes to reclassify the second deed of trust, which has been valued, from a Class 7 unsecured claim to Class 3 surrender. Order valuing has not been vacated, so the creditor is entitled to an unsecured claim under 11 U.S.C. § 506(a)(1).

4. According to Trustee's calculation, the Plan will complete in 64 months, as opposed to the proposed 36 months, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). In a plan paying 0% to unsecured creditors, Debtor is proposing a plan payment of $150.00 a month. This is approximately $142.11 after Trustee's fees. Approximately $560.73 in principal and interest remains to be paid to secured creditors; approximately $4,000 remains to be paid to priority creditors for total payments to creditors of $4,506.73. The plan will complete in approximately 32 months ($4,560.73/$142.11). As Debtor has finished 32 months of the plan, the total term will be for 64 months.

5. No current statement of income and expenses have been filed. Debtor is proposing to reduce plan payment to $150.00 from $690.00. The last filed statement of income and expenses (Dckt. No. 1, pages 46-49), indicates Debtor can pay $690.00 per month.

Debtor's Reply

Debtor responds by stating that Trustee is correct in that the plan terms were miscalculated. The plan was filed in response to an application to dismiss, and Debtor requests an extension of 45 days to get a plan confirmed.

There are significant issues, however, with Debtor's Plan that must be fixed before the court can consider confirming the Plan again. Debtor's counsel must confer with his client and go back to the drawing board to come up with a confirmable plan, one which properly classifies the creditors and brings the plan terms and duration to compliance with 11 U.S.C. § 1322. The court is uncertain that this can be achieved by the end of the requested extension period. As it stands, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

51. 13-27260-E-7 DIANA REAGAN
TSB-1 Kristen Bargmeyer

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-10-13 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection is dismissed as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Objection, the Debtor filed a Motion to Convert Case from a Chapter 13 to a Chapter 7 case. A Notice of Conversion to Chapter 7 was issued by the court on January 3, 2014 (Dckt. No. 62). The objection is dismissed as moot.

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

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

52. 13-32861-E-13 JAMES/BETH FRY
NLE-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-7-13 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to March 4, 2014 at 3:00 pm. No appearance at the January 28, 2014 hearing is required.

The Chapter 13 Trustee initially opposed confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral of Ocwen Mortgage. Debtors filed the Motion to Value Collateral of Wells Fargo Bank, N.A. on November 1, 2013. The court continued the motion to allow the parties to conduct discovery and for the Creditor to file its evidence.

The Trustee also noted that the Debtors may not be able to make the plan payments as the plan calls for payments of $1,250.00 per month for sixty months and Debtors Schedule J lists net income of $308.17 per month. It appears that Debtors cannot make the payments called for by the plan.

The Creditor and Debtors filed a stipulation on January 13, 2014, agreeing to continue the hearing on the Motion to Value Collateral to allow Creditor additional time to obtain a verified appraisal and for the parties to reach a possible resolution with respect to the Motion. Per that stipulation, the court ordered that the hearing on the Motion to Value Collateral be continued to March 4, 2014 at 3:00 pm.

The Court continues the hearing on the Objection to Confirmation to that date and time, so that this Objection can be heard in conjunction with the Motion to Value the Collateral of Wells Fargo Bank, N.A.

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

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

IT IS ORDERED that hearing on the Objection to Confirmation the Plan is continued to 3:00 p.m. on March 4, 2014.

53. 13-32861-E-13 JAMES/BETH FRY
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF GMAC MORTGAGE, LLC/DITECH MORTGAGE CORP 11-1-13 [17]

CONT. FROM 12-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 1, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Value to March 14, 2014 to 3:00 pm. No appearance at the January 28, 2014 hearing is required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5966 Raymond Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $100,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $106,496.00. Creditor GMAC Mortgage, LLC/Ditech Mortgage Corp's second deed of trust secures a loan with a balance of approximately $70,000.00. Therefore, the Debtor seeks to value the creditor's secured claim is determined to be in the amount of $0.00.

CREDITOR'S OPPOSITION

Creditor Wells Fargo Bank, N.A., as Indenture Trustee for GMACM Home Equity Loan Trust 2005-HE2, filed opposition, stating that Debtor failed to submit any evidence in support of the proposed Property value beyond the lay opinion of the Debtor. Based on information and belief, Creditor maintains that the Property's value is substantially more than $100,000.00. Creditor

consequently requests an opportunity to obtain a verified appraisal of the property.

The court continued the hearing to this date, in order to allow Creditor time obtain an appraisal and confer with the Debtor.

STIPULATION FOR CONTINUANCE

On January 13, 2014, the Creditor and Debtors filed a stipulation to agree to continue the hearing on the Motion to Value Collateral. The matter is continued to permit Creditor additional time to obtain a verified appraisal, and for the parties to reach a possible resolution with respect to the Motion (Dckt. No. 36). The court subsequently ordered that the hearing on the Motion to Value Collateral be continued to March 4, 2014 at 3:00 pm (Dckt. No. 38).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing of the Motion to Value is continued to **3:00 pm on March 4, 2014.**

54. 13-34664-E-13 TSB-1 PATRICK/MAURA GLAVIN Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 12-23-13 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' on December 23, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors did not appear to be examined at the First Meeting of Creditors held on December 19, 2013. Debtors are required to attend the meeting under 11 U.S.C. § 343, and Debtors have not presented any evidence to the court as to why they did not appear. The Meeting was continued to January 23, 2014 at 10:30 am.

Debtors must appear and submit to examinations under oath at the meeting of creditors under 11 U.S.C. § 431(a). The Trustee's ability to examine creditors and extract information from Debtors regarding living expenses, creditors, exemptions, income, and other relevant issues concerning Debtors' financial affairs is integral in the plan confirmation process, as Trustee will be able to verify all the information in the petition and ensure that Debtor's Plan meets the requirements of 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

55.	**12-39867-E-13** **SJS-2**	**CLIFF TILLMAN AND CASSANDRA KELLY-TILLMAN** **Scott Johnson**	**MOTION TO MODIFY PLAN** **12-12-13 [49]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 12, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

56. 13-30969-E-13 GENE TOWNSEND — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
NLE-1 Eamonn Foster — 10-15-13 [20]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 15, 2013. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Objection was continued to this hearing date to allow Debtor to file supplemental pleadings by December 11, 2013, and for the Trustee to reply to Debtor if so desired by December 18, 2013.

Initial Grounds for Objection

The Chapter 13 Trustee initially opposed confirmation of the Plan on the following grounds:

1. The Plan appears to attempt to modify a debt secured by Debtor's principal residence, under 11 U.S.C. § 1322(b)(2). Neither Debtor's Schedule J or the Plan call for ongoing mortgage payments on the $248,256.77 debt to the Abel Trust for the Deed of Trust (starting at page 10 of Debtor's Schedule D).

2. It appears the Debtor cannot make the lump sum payment required by the Plan under 11 U.S.C. § 1325(a)(6). The Additional Provisions section of the Plan state that "Debtor will sell the real property located at 23456 Richfield Road, Corning, California within 18 months, and will use the proceeds of that sale to pay 100% of the balance of the approved administrative fees and claims of all secured creditors, with the remaining going to the unsecured creditors, *pro rata*. Should he fail to find a buyer by the 18th month, Debtor will surrender the real property."

   Debtor admitted at the First Meeting of Creditors held on October 10, 2013, however, that he listed the same property for sale last year and was unable to sell it. He does not provide any specifics regarding the sale of the real property. Trustee cites a case from the U.S. Bankruptcy Court in the District of Minnesota, in which the court determined that in order for a proposed cure-by sale to pass muster, a debtor must specify the terms in which the debtor proposes to market the property, including "the listing price and the length and commencement date of the listing agreement," along with incorporations of default remedies, evidence as to past market efforts, the state of the market for the subject asset, current sales prospects, and more.

   Debtor does not include this information on his current Plan. Debtor only lists income from his business on Schedule I (in the amount of $435.77 per month, and businesses of $406.50 on Schedule J, which leaves Debtor with a profit of $29.27 per month). Debtor's Statement of Financial Affairs #1 states that Debtor's year to date income from the business is $1,629.00, at approximately $203.63 per month.

3. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor is a Farmer and according to the Statement of Financial Affairs #18, Debtor lists the nature of his business as "Beekeeper, Honey and Prunes." Debtor admitted at the First Meeting of Creditors that he had failed to disclose two bee hives on Schedule B.

4. Debtor on Schedule I shows income of $435.76 from operation of business profession or farm. As Debtor only has two hives and 9+ acres of prunes that have not been harvested, Debtor does not appear to receive this income, and cannot afford the monthly plan payments.

Debtor's Response to Trustee's Objection

Trustee objected to the Plan on the bases that: (1.) The plan calls for no ongoing mortgage payments; (2.) The plan lacks specificity as to the

sale of the real property; (3.) The plan fails to list assets on Schedule B" and; (4.) Debtor does not appear to receive income from the operation of his business.

Debtor responds to Trustee's arguments with the following:

1. The plan calls for no ongoing mortgage payments. While the plan does not call for ongoing payments, it proposes to pay the secured creditor in full upon the sale of the property, which is the security for the lien. Debtor states that he is unable to afford the payments, but does have significant equity in the property. This equity is sufficient to pay the secured creditor in full while also allowing for his unsecured creditors to receive a return on their claims.

   Debtor is stating that he is attempting to pay off his creditors diligently, by giving his home, business, and monthly income to his creditors, "in return for the time to sell his property to provide them even more." Under § 1322(c)(1), "a default with respect to…a lien on debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale…." Debtor's plan proposes to cure the default, pursuant to § 1322(b)(3), by way of sale. He is asking for 18 months from the date of filing, which he believes is a reasonable amount of time for this property, as referenced in § 1322(b)(5). Furthermore, the Secured Creditors have not objected to this plan. By all accounts, this should be the best plan for the debtor and his creditors, as it gives everybody the best chance available to recoup their losses.

2. Debtor originally listed the property in January, 2013, at a price of $349,000. However, that was the price set by a debtor who believed he had time to find a buyer at that price point. Debtor has come to understand that the market will not support that price, and has decreased the listing price to what his realtor believes is a much more appropriate listing.

   The property is currently listed at $299,000, and the debtor's Real Estate Agent believes this is more likely to get attention of serious buyers. Debtor property can sell, and that it will not likely sell for less than $275,000, and requests additional time find the right buyer and get through the escrow process.

3. Trustee points out that certain items were left off the debtor's Schedule B relating to his bee keeping business. This has been remedied with the attached Amended Schedule B and Schedule C. This leaves $3,045.32 as unexempt. Under Debtor's plan, unsecured creditors can expect to receive at least this amount from either Debtor's payments or the sale of the residence.

4. Trustee expresses his concern that Debtor might not be able to make the payment due to his meager income and even more meager expenses. However, to date, Debtor has not missed a single payment.

Trustee's Reply to Debtor's Response to Trustee's Objection to Confirmation

Trustee responds by stating that the plan does not call for ongoing mortgage payments and Debtor has admitted this. Where the plan proposes a sale within 18 months, and the creditor has not expressly agreed to the sale, this appears to impair a debt secured solely by Debtor's principal residence, contrary to the Bankruptcy Code.

Additionally, while Debtor has furnished a declaration from a real estate agent (Dckt. No. 38), the declaration reveals the property was listed (possibly with the agent), since January 20, 2013. The case was filed August 20, 2013, and Debtor is proposing to remain the property for over two years and is not proposing any mortgage payments for at least 18 months. Debtor has not disclosed if any payments were in the 8 months prior to filing. If Debtor has already failed to sell the property in the 8 months prior to filing, the plan appears to be speculative at best.

The court agrees that Debtor has not produced sufficient evidence that a sale of the property can be effectuated, and that Debtor has obtained creditor's consent for the sale. Debtor's Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

57. 09-38371-E-13 TROY/LETRICIA STEED **MOTION TO VACATE DISMISSAL OF CASE**
NUU-6 Chinonye Ugorji **12-26-13 [173]**

CASE DISMISSED 12/6/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 13 Trustee, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 32 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Set Aside Dismissal of Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Set Aside Dismissal of the Case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors filed their Chapter 13 case on August 27, 2009. Their Chapter 13 Plan was confirmed on January 29, 2010.

The Trustee filed a Motion to Dismiss Debtors' case for failure to make plan payments on October 29, 2013. Debtors' counsel claims that she communicated this information to debtors, who confirmed that they would pay the amount in default as soon as possible. Debtors state that they have had several issues come up this year that have caused them grave financial hardship, including reductions in their work hours. For instance, Joint Debtor Letricia Steed's annual gross income went from $117,000.00 in 2012 to $84,850.95 in 2013. ¶ 5 Declaration of Debtors in Support of Motion to Vacate Order of Dismissal, Dckt. No. 175 at 2.

Debtors state that they have struggled with their plan payments since the modified plan was confirmed on June 13, 2012. Debtors state that "by virtue of the Order Modifying Plan" (Dckt. No. 141), Debtors were required to make chapter 13 payments of $3,142.48 as opposed to the $2,817.48 that they had proposed to cure the Internal Revenue Claim for overpayment to the debtors.

Debtors informed their attorney that they would make the full payments, and the attorney relied on their word that full payment would be made. Debtors, however, only made a partial payment, resulting in the

dismissal of this case. Debtors incorrectly assumed that the partial payment would be sufficient to avoid dismissal of their case. ¶ 9, Declaration of Letricia Steed and Troy Dimitri Steed. Debtor's attorney never filed a response to Trustee's Motion, as she erroneously assumed that Debtors would become current.

Debtors' Chapter 13 Plan proposes to cure the arrearage owed on their mortgage, to pay off the Internal Revenue Service on their priority claim, the GA Department of Revenue their priority and secured claims, as well as the Class 2 claim of Creditor MCAS FCU. Debtors are currently in their 52nd month of a 60 month plan, and have made total payments of $142,281.92 to date, and are on track to completing their plan.

Debtors have brought their payments current. Exhibit A, Copy of Chapter 13 Payment Made Bringing Debtors' Account Current, Dckt. No. 176. Debtors' attorney has contacted the office of the Chapter 13 Trustee. Debtors' attorney states that she understands that the Chapter 13 Trustee is not opposed to the relief requested, but Trustee states otherwise in his reply.

Trustee's Reply

The original Motion to Dismiss (Dckt. No. 162) was heard on December 4, 2013. At the time of the hearing, the case was still delinquent and Debtor did not file a response. The Motion was granted, and an Order Dismissing the Case was entered on December 6, 2013. Debtors have made two payments after the dismissal, in the amounts of $3,142.48 on December 2, 2013, and another payment in the amount of $2,566.44 on December 20, 2013. Since the case has been dismissed, the Trustee has generated debtor refund checks of the amounts paid in December, by checks dated December 31, 2013.

Debtors' attorney states that Debtors understand that the Trustee does not oppose the relief requested, but do not state when the Debtors' attorney contacted the Trustee, and to whom they spoke. Trustee states that his records do not reflect this information.

According to Trustee's records, dismissal was proper based on delinquency and no opposition filed. The Debtors' attorney has acknowledged that no opposition was filed, and does not explain why the failure to file an opposition to Trustee's Motion to Dismiss is a mistake that will allow Debtors to set aside a valid order dismissing. Additionally, Debtors do not explain why the failure to make confirmed plan payments is a mistake that will allow Debtor to set aside a valid order dismissing. Additionally, Trustee notes that Debtors changed addresses again, but this is not addressed (Dckt. Nos. 69, 76, and 179).

Debtor's Reply to Trustee's Opposition

Debtor's attorney states that he spoke with Trustee's staff, Ed Weedman and David Grass, on December 9, 2013, and December 11, 2013. At this time, Debtors' attorney went over the case history and circumstances that led to the delinquency, as well as Debtors' intent to seek an order vacating the dismissal. While there was no express affirmation from the staff

members that Debtors' attorney spoke to, there was also no express objection to the filing of the motion.

Debtors have moved homes about three times since the filing of the petition. The pleading states that "[t]heir last move was not reported on time and the change of address was not filed on time for that reason," but Debtors do not expound on what that reason is. ¶2, line 2, Debtor's Reply to Trustee's Opposition (Dckt. No. 185). Debtors allege that they never received the last filed Notice of Default and the Motion to Dismiss as the Notice was mailed to their old address.

Debtors further state that the mistake committed by Debtors was a combination of carelessness and deficient knowledge in not realizing that making partial payments are insufficient to avoid a dismissal. Debtors also admit to failing to notify their attorney that they made a partial payment. Debtors have had a "rough road" through the Chapter 13 process and have almost come to the end of their plan. Dismissing the case would cause them great hardship. Debtors request that the case be reinstated to allow them to complete the plan, rather than having the case be dismissed before the plan is finished.

DISCUSSION

The court will construe the motion as a motion to alter or amend the Order, pursuant to Federal Rule of Civil Procedure 59(e), incorporated herein by Federal Rule of Bankruptcy Procedure 9023, or in the alternative, as a motion for relief from the Order, pursuant to Federal Rule of Civil Procedure 60(b)(6), incorporated herein by Federal Rule of Bankruptcy Procedure 9024.

A Rule 59(e) motion "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). "[A] motion for reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Hawaii 1990).

A request for relief under Federal Rule of Civil Procedure 60(b)(6) is typically granted sparingly, in the most extraordinary circumstances in which parties were barred from acting in a timely manner to correct an erroneous judgment. Although Rule 60(b) should be liberally applied to accomplish justice, *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc.* (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007), at the same time, it should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." Id. (citations omitted, internal quotation marks omitted).

Here, Debtors' attorney claims that Debtors informed her that they would make the full payment due under the Notice of Default. Debtors attest to informing their attorney that they would bring their payments current. ¶ 3, Declaration of Debtors in Support of Motion to Vacate Order of Dismissal. Debtors state that they made a partial payment, believing it to be sufficient to avoid a dismissal, but failed to inform their attorney of the partial nature of the payment. *Id.* at ¶ 8. As a result, Debtors' attorney did not file opposition to Trustee's Motion to Dismiss.

Contrary to Debtors' attorney assertions, however, Trustee's review of his records show that Debtors' attorney contacted the Trustee's office prior to the hearing on the Motion to Dismiss on December 4, 2013. Rather, according to the Declarations of Ed Weedman and David Grass (Dckt. Nos. 182 and 183), Debtors' attorney contacted the Trustee's office after the dismissal had already been entered. Debtors' attorney made no effort to communicate with the Trustee's office before the hearing on the Motion to dismiss to inform Trustee's office that Debtors planned to become current under the plan. Trustee's Motion to Dismiss was set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1), which advised Debtors that if written opposition were to be filed, Debtors must served and file the opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing. Debtors did not file a response, even to inform Trustee that the default would be cured and that they hoped to become current on plan payments.

Moreover, Trustee's office did not represent to Debtor's attorney that the Trustee supported the Motion to Vacate the Dismissal. David Grass, Financial Administrator for the Trustee's Office, states in his declaration that, according to his notes on a conversation Grass had with Debtor's attorney on December 11, 2013, Debtor's attorney asked about the odds of the dismissal being vacated. ¶ 4, Declaration of David Grass. Grass replied that he didn't know. *Id.* Debtors' attorney called Grass again on January 21, and implied to Grass that he was the person who made the assertion that the Chapter 13 Trustee would not be opposed to vacating the dismissal. Grass clarifies in his declaration that he did not provide such assurances to Debtor's attorney, as it is not within his authority to determine Trustee's position regarding a matter that he has not reviewed. *Id.* at ¶ 7.

Ed Weedman of the Trustee's office filed a similar declaration on January 21, 2014, stating that he had received a phone call from the Debtors' attorney on December 9, 2013. Debtors' attorney and Weedman discussed the payments made by Debtors to Trustee. Weedman also states that at no time did he indicate the Trustee would not be opposed to the relief requested. ¶ 3, Declaration of Ed Weedman, Dckt. No. 183.

Additionally, as Trustee highlights, the actual, primary reason for Trustee's Motion to Dismiss was Debtors' apparent inability to make the plan payments and be current under their Plan. Debtors were delinquent $5,689.92 in plan payments at the time the Motion to Dismiss was filed, on October 29, 2013, and were still delinquent by the time the Motion was heard on December 4, 2013. The court is confused as to what has changed between December to late January of this year, to enable the court to conclude that Debtors will be able to afford their plan payments from this point forward.

Debtors state that they have continued to make their plan payments amidst their financial struggles, and state that they have faced even more financial constraints as Debtor wife has lost more than a quarter of her income. Declaration of Debtors in Support of Motion, Dckt. No. 175. Debtors do not explain, however, how their financial circumstances have changed in a way that would allow them to make all future plan payments. Debtors' declaration seems to suggest just the opposite: that Debtors are struggling financially, and will incur further hardship in having to chalk up enough money to make payments for the remainder of their Plan. Moreover, it does not appear that Trustee is in support of Debtors' Motion, and continues to register doubt as to whether Debtors can afford to make further plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors, and is cause to dismiss Debtors' case. 11 U.S.C. § 1307(c)(1).

RULING

The Debtors do not make a compelling case for the extraordinary remedies of altering the judgment pursuant to Fed. R. Civ. P. 59(e), or a motion for relief from a court's order under Fed. R. Civ. P. 60(b)(6). Basically, the Debtors defaulted, their case was dismissed, and now they want to cure the default and proceed with their plan.

The testimony of the Debtors is that they told their attorney they would cure the default. Based on the "promise" of the Debtors, counsel did not file an opposition. (In retrospect it would have been prudent to file one just in case the "least sophisticated consumer" Debtors failed to make the payment.) Declaration, Dckt. 175. The most compelling element is that the Debtors are 8 months away from completing the plan, including the arrearage on their mortgage and payment of tax claims. They have funded the plan with $142,281.92.

The Chapter 13 Trustee is fully justified in opposing the Motion. The court would be warranted in denying the relief. However, the court also considers that while the Chapter 13 Trustee has properly opposed the Motion, the facts of this case are fairly unique. It is not contested that the Debtors represented to their attorney they would cure the default. Hopefully, Debtors' counsel has learned that even if a debtor promises that payment will be made (even if crossing their heart and pinky swearing), an opposition to a motion to dismiss should prudently be filed so that counsel (1) obtains confirmation of the cure and (2) that counsel will learn that the cure payment was not made and have a fighting chance to delay the dismissal of the case.

These Debtors would be greatly prejudiced if the case is dismissed and they have to start the Chapter 13 process over. The court grants the motion. In obtaining this relief, the Debtors and counsel should recognize that they have shot their one silver bullet. Further defaults will result in the dismissal of the case if not cured or other appropriate action taken.

While the court has issued corrective sanctions in other situations where an attorney has failed to oppose a motion to dismiss, such sanctions are not appropriate in the present case. While counsel should have filed an opposition, the court believes that this process of filing the present

motion and being called to task by the Chapter 13 Trustee will have the appropriate corrective effect.

However, the court will also return to the calendar the Trustee's Motion to Dismiss. If the Debtors are not current at the time of the rescheduled hearing, or further continued hearing of said motion, the court shall dismiss the case.

The court vacates the dismissal of Debtors' case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Set Aside the Dismissal and Reinstate the Case filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Vacate Order of Dismissal is granted, and the order of this court dismissing the case filed on December 6, 2013, (Dckt. 169) is vacated.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee's Motion to Dismiss, DCN: DCP-1, is reset to the calendar and a hearing on said motion shall be conducted at 10:00 a.m. on February 19, 2014.
>
> **IT IS FURTHER ORDERED** that on or before February 12, 2014, the Debtors shall file and serve evidence that they are current on all plan payments through January 2014, or if not current, the status of the payments, the amount of any defaults, and show cause why the court should not dismiss the case because of such defaults.

58. 11-31275-E-13 KEVIN/MEGAN CANFIELD MOTION TO MODIFY PLAN
BLG-6 Paul Bains 12-5-13 [83]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this case, Trustee has filed opposition to confirmation of Debtors' Plan. Trustee expresses concern over whether Debtors can afford the proposed plan payments. Debtors filed an Amended Statement of Income (Dckt. NO. 87), in support of their proposed plan payment of $3,200.00. The income listed for primary debtor is stated as $2,456.67, which includes unemployment compensation in the amount of $1,256.67. There is no source listed for the difference of $1,200.00 on Schedule I.

As calculated in Debtors' expenses, Debtors have a monthly net income of $3,274.01, which would comfortably fund the proposed plan payment. If Debtors' income was miscalculated reducing income to $1,256.57, Debtors' monthly net income would decrease to $2,074.01. Trustee believes that Debtor may have sufficient income based on Debtor's declaration (Dckt. No. 85), which shows rental income of $1,200.00, but Trustee is not aware if the Debtor is still receiving this income as no separate statement for the rental property was attached to the Schedules as required by Schedule I.

As it stands, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

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

59. 13-26375-E-13 KAREN KRIEG — MOTION TO MODIFY PLAN
SJS-1 Scott Johnson — 12-11-13 [26]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 11, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

60. 09-42376-E-13 TRY/LILY KHOU — MOTION TO MODIFY PLAN
PLC-6 Peter Cianchetta — 12-11-13 [81]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee opposes confirmation of the modified plan on the basis that Debtor may have additional disposable income, and that Debtors' Amended Schedules I and J filed on December 9, 2013 (Dckt. No. 79) were not filed using Official Form B 6I and B 6J effective December 2013.

With respect to Debtors' possible additional income, Trustee takes issue with two aspects of the Plan:

(1.) Debtors' Schedule J budgets $1,000 monthly for alimony, maintenance, and support paid to others. Debtors' Domestic Support Obligation Checklist provided to Trustee and dated November 25, 2009, states that Joint Debtor is paying child support of $1,000 monthly to Annie Wagner. Debtor's confirmed plan provides for Wagner as a Class 5

priority creditor in the amount of $15,000 in child support arrears.

Debtor's Motion (Dckt. No. 81 at 2) and Declaration (Dckt. No. 83 at 2) indicate that Wagner, Debtor's former spouse, passed away shortly after the plan was confirmed. No claim was filed for domestic support obligations. Trustee is uncertain to whom Debtor is paying $1,000 in monthly support payments, as depicted in Debtors' Schedule J.

(2.) Debtor's Schedule J budgets $400 monthly for a proposed auto payment. This amount was also budgeted in their prior Schedule J, filed September 13, 2010. Debtors filed an Ex Parte Motion for Order Authorizing Post-Petition Debt on October 13, 2010, to purchase a vehicle not to exceed $15,000.00. The court subsequently granted the motion and authorized Debtor to incur post-petition debt in an amount not to exceed $15,000.00 and with payments not to exceed $500.00 per month for the purchase of a vehicle.

Debtors do not include a vehicle in Class 4 of their proposed modified plan, but continue to budget $400 for a proposed auto payment. It is uncertain whether Debtor purchased a vehicle and continues to make payments, or if the debt is actually paid off and Debtor continues to budget the payment.

Based on the above-listed issues with Debtors' schedules and the possibility of additional disposable income, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

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

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

61. 12-28877-E-13 JOEL SANCHEZ
ACK-3 Aaron C. Koenig

MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC.
12-7-13 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 7, 2013. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2720 Marshall Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $260,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $294,815.98. Creditor CitiMortgage's second deed of trust secures a loan with a balance of approximately $125,029.78. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiMortgage secured by a second deed of trust recorded against the real property commonly known as 2720 Marshall Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $260,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

62. 13-32177-E-13 DARSHAN SINGH **MOTION TO CONFIRM PLAN**
JLB-2 James Brunello **12-16-13 [35]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2013. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Trustee has filed opposition to Debtor's Motion to Confirm the Plan. The Trustee opposes confirmation on the below grounds.

1. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying $225.00 per month for one month, and $754.00 for one month, and $762 for 58 months with a dividend of 10.9% to unsecured claims.

2. Debtor has included on his Amended Schedule I, income of $166.67, derived from tax refunds. It appears that Debtor does not rely on the income to support his plan, but instead put the income on Schedule I as a means to resolve Trustee's request for turnover of the refunds.

In 2012, Debtor received a federal tax refund of $4,836. And a state refund of $573.00. The combined total of these refunds would be $5,409, and would generate a monthly amount of $450.75 to be used as monthly income. Trustee is aware that refunds vary yearly, and request that Debtor be required to turn over the full amount of both refunds each year in a lump sum upon receipt, rather than estimate a monthly amount on Schedule I. This will avoid Debtor coming up short. Debtors have also not shown the ability to pay the extra $166.67 on Schedule I until the 2013 refunds are received, and as on the date of filing, September 17, 2013, Debtor reported only $200 held in bank accounts.

Sa

3. Additionally, in Class 2, Debtor lists Schools Credit Union's claim for a 2005 Lexus with a claim amount of $110,897.74, which is probably a typographical error. The claim was filed for $10,897.74 (Court Claim No. 2).

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

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

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

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

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

63. 12-26979-E-13 ZORA RANGI **MOTION TO MODIFY PLAN**
BLG-3 Paul Bains **11-21-13 [51]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2013. By the court's calculation, 68 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

64. 13-21082-E-13 LEE/REBECCA JASPER **MOTION TO CONFIRM PLAN**
Pro Se **11-12-13 [88]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 77 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, Trustee has filed opposition to the confirmation of Debtors' plan.

1. Debtors are $1,7650.00 delinquent in plan payments to Trustee to date, and the next scheduled payment of $2,215.00 is due on January 25, 2014. The case was filed on January 28, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $4,500.00 into the Plan to date.

2. Section 6 of the Plan states that Additional Provisions are attached, but none exist.

3. The Plan provides for creditor Santander in Class 2; however, Debtors provides a 0% interest rate and $0.00 monthly dividend to this creditor. The Plan also lists Class 1 mortgage arrears in the amount of $24,293.00. However, Debtors do not provide a monthly dividend.

4. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total $15,660.00 from real property listed on Schedule A, and Debtors propose a 10% dividend to unsecured creditors, which totals $3,439.00.

5. There is no evidence of mortgage payments made by Debtors. Debtors provide for Wells Fargo Home Mortgage in Class 1 of the Plan; however, Debtor's Declaration (which is not under the penalty of perjury) states that Debtor has been making the mortgage payments directly to this creditor. Debtors have not provided any evidence that the payments have been being made since the filing of the case on January 28, 2013, approximately one year ago. Trustee has only been able to make 3 payments to this creditor for a total of $4,149.78. Trustee was unable to make mortgage payments as Debtors' plan of $450.00 was insufficient to fund the Class 1 mortgage payment of $1,383.26. The current plan proposes a higher payment, which is sufficient to fund the Class 1 mortgage payment beginning on December 25, 2013.

6. It appears that Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' monthly projected disposable income listed on Schedule J reflects $1,162.00, and Debtors are proposing plan payments of $2,215.00.

7. Debtors' Plan also does not provide for the claim of Wells Fargo, which filed a secured claim for arrears in the amount of $23,707.50 on February 28, 2012 this debt is not provided for in the Plan.

   The Plan also does not provide for the loan of Richard Valasquez, listed on Schedule D. While treatment of all secured claims are not required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the Plan, or because they have additional expenses.

Lack of Supporting Evidence

Debtors have failed to meet their burden of proving the requirements of confirmation. See Amfac Distribution Corp. v. Wolff (In re Wolff), 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence, typically in the form of a Debtors' Declaration proving the elements of 11 U.S.C. §1325(a), is required. See Local Bankr. R. 9014-1(d)(6). Local Bankruptcy Rule 9014-1(d)(6) requires that every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested.

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to

> law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

Debtors' "Proposed Amendment and Clarification to Second Amended Plan" does not provide for any qualification on stating that the information is true and correct, or let the witnesses provide a declaration based on information and belief. Based on the lack of competent evidence before the court to support confirmation of Debtors' Second Amended Plan, and Debtors' failure to address Trustee's concerns regarding the feasibility, classifications, and treatment of creditors of the Plan, the current amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

65. 13-21082-E-13 LEE/REBECCA JASPER — CONTINUED MOTION TO DISMISS CASE
NLE-2 Pro Se — 10-15-13 [83]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*)and Office of the United States Trustee on October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Dismiss Case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is $450.00 delinquent in plan payments, which represents one month of the $450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 10, 2013.

OPPOSITION FILED

Debtors responded by stating that they were under the impression that they had ninety days after service by the Trustee of the Notice of Filed claims to modify and serve an amended plan.

In addition, Debtors did not intend to cause unreasonable delay to their creditors. Debtors planned to pay off their 2005 Grand Prix before submitting the new plan by November 8, 2013. Debtor is also attempting to modify their contract with Wells Fargo. For the foregoing reasons, Debtors request the court to allow Debtors the ninety days in which to file their amended plan and Notice to Confirm.

The court is unclear how Debtor thought they had 90 days (three months) to file an amended plan. Furthermore, a review of the docket reveals that no Motion to Modify has been filed, set or served to date, which is past the November 8, 2013 date stated by the Debtors.

CONTINUANCE

At the hearing on November 13, 2013, the court continued to Motion to Dismiss to January 28, 2014, so that Debtors could file and serve proposed plan amendments by November 22, 2013.

Debtors filed their Second Amended Plan on November 12, 2013 (Dckt. No. 90), along with a Motion to Confirm Plan on that same day. Thus, the grounds for Trustee's Motion is now moot, and the Motion will be denied.

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

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

66. 13-34583-E-13 PGM-1 — JOSHUA/FELICIA GONZALES — Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF THE GOLDEN ONE CREDIT UNION — 12-23-13 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 23, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4932 Pine Nut Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $145,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $153,188.00. Creditor Golden One Credit Union's second deed of trust secures a loan with a balance of approximately $20,439.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden One Credit Union secured by a second deed of trust recorded against the real property commonly known as 4932 Pine Nut Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $145,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

67. 13-34583-E-13 JOSHUA/FELICIA GONZALES
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF THE GOLDEN ONE CREDIT UNION
12-23-13 [27]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 23, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4932 Pine Nut Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $145,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $153,188.00. Creditor Golden One Credit Union's third deed of trust secures a loan with a balance of approximately $17,437.00. Therefore, the respondent creditor's claim secured by a third deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Golden One Credit Union secured by a third deed of trust recorded against the real property commonly known as 4932 Nut Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $145,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

68. 13-34583-E-13 JOSHUA/FELICIA GONZALES
TSB-1 Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
12-23-13 [18]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 23, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the January 28, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on valuing certain collateral. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), as the plan relies on two Motions to Value Collateral being filed for Golden One Credit Union, listed twice in Class 2C. The court has granted the two Motions to value, resolving the Trustee's objection to confirmation.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

69. 10-36384-E-13 SEVERINO/MARIA CAMPANA — MOTION TO MODIFY PLAN
JT-2 John Tosney — 12-9-13 [42]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 9, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

70. 13-28985-E-13 SANTINO/JILL VIRAMONTES MOTION TO MODIFY PLAN
CAH-2 C. Anthony Hughes 11-26-13 [20]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 63 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Modify Plan. No appearance at the January 28, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee initially filed an objection to the Motion to Confirm the Plan, on the basis that the plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' Plan confirmed on September 5, 2013, includes a step payment increase in Month 16 (November 2014) of $850.00. This increase is due to a 457 loan being paid (Dckt. No. 1 at 24). Debtors' proposed plan payments do not include any increase in Month 16. The feasibility of the plan also depends on the Debtors' Motion to Approve Loan Modification set for January 14, 2014 being granted.

On January 22, 2014, Trustee filed a withdrawal of his objection. Debtors had responded to Trustee's previous objection, stating that they do not object to the increase in plan payments included in the confirmed plan. Trustee does not object to Debtor's proposed increase in plan payments. The Motion to Approve Modification heard on January 14, 2014, was also granted by this court.

Given Trustee's non-opposition to Debtors' proposed plan payments, the increase proposed by Debtors will be incorporated in the order confirming the plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 26, 2013 (with the additionally ordered language regarding plan payments stated below) is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.
>
> **IT IS FURTHER ORDERED** that the payment schedule described in Section 6, the Additional Provisions of Debtors' Plan, be revised to read: "$9,711 total paid for months 1 through 4; $365.00 a month for months 5 through 15; and $1,215.00 a month for months 16 to 60."

71. 13-34185-E-13 DEBRA WATROUS — MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria — 12-12-13 [32]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted. No appearance required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 12, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

72. 14-20091-E-13 MARLENE MCCRARY **MOTION TO EXTEND AUTOMATIC STAY**
DBJ-1 Douglas B. Jacobs **1-8-14 [8]**

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and all creditors on January 8, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Extend Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Extend Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an extension of the automatic stay in this case pursuant to 11 U.S.C. § 362(c)(3)(B). Debtor filed a Chapter 13 bankruptcy case on November 20, 2012, Case No. 12-40267. Debtor asserts that she filed this case in good faith to save her home, and that she has completed all of her schedules and statement of financial affairs. Debtor has also filed her federal and state tax forms.

That case was dismissed on November 15, 2013, for Debtor's failure to make her payments under the plan. Debtor explains that she was on unemployment assistance at the time her prior bankruptcy case was dismissed. She is now employed and therefore can make necessary plan payments. The value of all property to be distributed in this case is not less than that which creditors would receive in a Chapter 7 case, and Debtor has no domestic support obligations under 11 U.S.C. § 1325(a)(8). Debtor states that she can now make all payments due under the plan, and will be able to comply with the plan.

DECLARATION OF DEBTOR

Debtor states that her first bankruptcy case, Case No. 12-40267, was dismissed for her inability to make her Chapter 13 Plan payments. She was on unemployment assistance at the time. Now, Debtor states that she has returned to work and has a good job. She states that she should have no trouble in making all of the requisite Chapter 13 payments. She wishes to complete her plan to save her home. She is prepared to make any and all necessary payments under the plan, and comply with the court and Trustee's requirements and requests.

DISCUSSION

Debtor had previously filed a Chapter 13 bankruptcy case (No. 2012-40267) on November 20, 2012. Debtor had successfully confirmed a Plan on March 8, 2013. The Trustee filed a Notice of Default and Motion to Dismiss Case for Failure to Make Plan Payments, however, when Debtor had become delinquent in $5,217.38 in plan payments and Trustee received no further payments after the notice was issued. The case was dismissed on November 15, 2013, as Debtor could not cure the default. See Order, Bankr. E.D. Cal. No. 12-40267 Dckt. 43, November 15, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

Debtor states that she has secured employment again, after being out of work temporarily. She states that she has a good job that will allow her to make all of her plan payments. She states that she is now in a position to make all of the plan payments in her new plan, and that she is not trying to delay or infringe on the legal rights of her creditors.

The Debtor has offered clear and convincing evidence to rebut the presumption of bad faith. Debtor has demonstrated a change in circumstances from the last filing that indicates to the court the Debtors will be successful in completing a plan.

The motion is granted.

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

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

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

73. 11-26797-E-13 RUDOLPH/MARY TAMAYO — MOTION TO MODIFY PLAN
RIN-4 Michael Rinne — 12-12-13 [73]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, Trustee opposes the proposed plan for the following reasons:

1. Debtors incorrectly state attorney fees in Section 2.08 of the Plan. Per the plan confirmed on October 19, 2013, additional attorney fees of $1,500 were to be paid through the plan, and not $0.00 as stated in the proposed plan.

2. Debtors are proposing a 61 month plan. Debtors propose that beginning in December, 2013, Debtors will pay the sum of $5,465.00 for the remaining 29 payments. December is the 33rd month of the plan. Thus, only 28 payments remain to reach 60 months.

3. Trustee is uncertain of Debtors' ability ot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors were delinquent $15,311.04 under the confirmed plan, which had a monthly payment of $5,103.68. Debtors are proposing to increase the payment to

$5,454.00. Debtors are proposing to reduce expenses to afford this payment.

Debtors have not explained, however, how the $15,311.04 delinquency was spent or why they will be able to reduce expenses now when they were unable to do so in the past.

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

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

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

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

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