UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 29, 2014 at 3:00 p.m.

1.	**14-22500-E-13 MET-1**	**JOSE ACOSTA GOMEZ AND ANA ACOSTA** **Mary Ellen Terranella**	**MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.** **3-31-14 [14]**

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, respondent creditor, and Office of the United States Trustee on March 31, 2014. 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 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 5201 Congress Avenue, Oakland, California. The Debtor seeks to value the property at a fair market value of $331,600.00 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 $498,061.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $74,615.00. 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 Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5201 Congress Avenue, Oakland, 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 $331,600.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

2. 13-35604-E-13 SLH-5 | **RENE/MARIA RESTUA** | **Seth L. Hanson** | **MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC** | **3-25-14 [52]**

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, respondent creditors, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Midland Funding, LLC for the sum of $8,418.55. The abstract of judgment was recorded with Solano County on October 11, 2012. That lien attached to the Debtor's residential real property commonly known as 2418 Shawnee Ct., Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $464,000.00 as of the date of the petition. The unavoidable consensual liens total $515,501.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Midland Funding, LLC, Solano County Superior Court Case No. FCM 127519, recorded on October 11, 2012, Document No. 201200102978, with the Solano County Recorder, against the real property commonly known as 2418 Shawnee Ct., Fairfield, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. 13-35604-E-13 RENE/MARIA RESTUA — MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
SLH-6 Seth L. Hanson — 3-25-14 [63]

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 Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Avoid Judicial Lien without prejudice. 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:

A judgment was entered against the Debtor in favor of Target National Bank for the sum of $5,522.17. The abstract of judgment was recorded with Solano County on August 5, 2010. That lien attached to the Debtor's residential real property commonly known as 2418 Shawnee Ct., Fairfield, California. Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $464,000.00 as of the date of the petition. The unavoidable consensual liens total $51,501.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075.00 in Schedule C.

However, the Federal Deposit Insurance Corporation's website lists Target National Bank as "inactive as of March 13, 2013." According to the website, the Bank closed voluntarily and liquidated its assets. It appears that Target National Bank's interest in the judgment lien has been assigned to a third party after the liquidation, whose rights will be affected by this Motion, yet was not noticed.

On Schedule F Target National Bank lists as having a "Judgment lien" and the Law Offices of Patenaude & Felix, APC is listed as the "Assignee or other notification for: Target National Bank." Dckt. 66 at 12-13. The court is unsure as to how the Debtor, providing the court with notice that Target National Bank was closed and is no longer in operation, is purporting to sever that closed entity at a former address listed with the FDIC. Certificate of Service, FDIC BankFind Details Attachment. Dckt. 67. This

attachment to the Certificate of Service states that the FDIC is to be contacted for further details. No information is provided as to what further "contacts," if any, were attempted with the FDIC. No information is provided about any contacts attempted to the law firm who represented Target National Bank in obtaining the judgment and judgment lien. No information is provided about any discovery attempted and obtained concerning the identity of the entity which is current the creditor in this case.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence that Target National Bank still holds the judgment lien after the liquidation.

The court will not speculate and hope that Debtors have named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

A minute order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien is denied without prejudice.

4. 13-35604-E-13 RENE/MARIA RESTUA — MOTION TO AVOID LIEN OF HSBC BANK NEVADA, N.A.
SLH-7 Seth L. Hanson — 3-25-14 [57]

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 Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Avoid Judicial Lien without prejudice. 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:

A judgment was entered against the Debtor in favor of HSBC Bank Nevada, N.A. for the sum of $4,199.07. The abstract of judgment was recorded with Solano County on June 14, 2011. That lien attached to the Debtor's residential real property commonly known as 2418 Shawnee Ct., California. Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $464,000.00 as of the date of the petition. The unavoidable consensual liens total $515,501.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075.00 in Schedule C.

The Motion is denied for insufficient service. The court has not been presented with any evidence from Debtors that HSBC Bank Nevada, N.A. is actually the creditor having a claim in this case. A creditor is defined by 11 U.S.C. § 101(1)(A), as relevant to this Motion, to be an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term "claim" is defined by 11 U.S.C. § 101(5)(A), as relevant to this Motion, to be a "right to payment . . . ."

The Federal Deposit Insurance Corporation's website lists HSBC Bank Nevada, N.A. as "inactive as of July 1, 2013." According to the website, the Bank closed voluntarily and liquidated its assets. It appears that HSBC Bank Nevada, N.A.'s interest in the judgment lien has been assigned to a third party after the liquidation, whose rights will be affected by this Motion yet was not noticed.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colarable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence that HSBC Bank Nevada, N.A. still holds the judgment lien after the liquidation.

The court will not speculate and hope that Debtors have named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

A minute order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien is denied without prejudice.

5. 14-23504-E-13 SHERMAN/MAXINE THOMPSON MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Scott J. Sagaria 4-15-14 [19]

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 Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. 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.

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

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

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

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

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The court's decision is to grant the Motion to Extend the Automatic Stay.

Sherman Thompson and Maxine Thompson ("Debtors") seek 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. 13-20030) was dismissed on December 13, 2013, because Debtors failed to provide for the priority claim of the Franchise Tax Board, and because the confirmed Chapter 13 Plan would have taken more than 60 months to complete. *See* Order, Bankr. E.D. Cal. No. 12-20030, Dckt. 78, December 13, 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, Debtors state that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed: due to health problems which resulted in hospitalization, suffered by one of the Debtors, the Debtors had communication problems with their counsel around the time the former case was dismissed.

Debtors testify that if the automatic stay is extended they believe they will be able to complete a plan, that they had been current in their payments under the plan in the former case, and that they have used the proofs of claim from the last case to cure the shortcomings under the former plan and to come up with a feasible plan in the present bankruptcy case.

The Debtors have 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 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 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.

6. 13-35315-E-13 WSS-2 STUART/TAMMIE CLARK W. Steven Shumway MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES, INC. 3-5-14 [36]

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, respondent creditor, and Office of the United States Trustee on March 4, 2014. By the court's calculation, 56 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 without prejudice. 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 a 2003 Dodge Ram 1500. The Debtor seeks to value the property at a replacement value of $3,200.00 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).

However, Debtor names and serves Wells Fargo Dealer Services, Inc., which does not appear to the entity owning the obligation. According to the Proof of Claim registrar, Wells Fargo Bank, N.A. filed a proof of claim for the 2003 Dodge Ram 1500 on January 15, 2014. Proof of Claim No. 10. As the Motion does not seek relief to the actual creditor, 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 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 denied without prejudice.

7. 13-35315-E-13 STUART/TAMMIE CLARK — MOTION TO CONFIRM PLAN
WSS-3 W. Steven Shumway — 3-5-14 [40]

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 March 5, 2014. By the court's calculation, 55 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 Chapter 13 Trustee opposes the motion on the basis that the plan relies on a pending Motion to Value Collateral. The court having denied the motion to value, the Trustee's objection is sustained on this basis.

The Trustee also objects on the basis that the attorney fees in the proposed plan of $500 conflicts with the Rights and Responsibilities filed by the Debtor on December 3, 2013, which represent that attorney fees in the case are $2,500 and Debtors paid $500 prior to filing. The Trustee states he is unable to determine the balance of attorneys fees, if any.

DEBTOR'S RESPONSE

Debtor responds, stating that the feasibility of the plan relies on a pending motion to value collateral. Counsel for Debtor states that the software program defaults to zero on the attorney fee provision and Counsel failed to manually correct the provision. Attorneys fees should be $2,500 and Debtors paid $500.00 prior to filing.

However, the court having denied the motion to value collateral without prejudice, the objection is sustained.

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.

8. 12-35521-E-13 CHRISTOPHER DEAN — MOTION TO CONFIRM PLAN
PGM-5 Peter G. Macaluso — 2-5-14 [161]

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

9. 12-35521-E-13 CHRISTOPHER DEAN — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-2 Peter G. Macaluso — 2-20-14 [172]

SAN FRANCISCO FIRE CREDIT UNION VS.

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

10. 12-35521-E-13 CHRISTOPHER DEAN — **CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH COLLEGE GREENS EAST HOMEOWNER AND EUGENE BURGER MANAGEMENT CORP.**
PGM-6 Peter G. Macaluso — **2-10-14 [167]**

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

11. 12-35521-E-13 CHRISTOPHER DEAN — **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
13-2289 — **9-12-13 [1]**
DEAN V. COLLEGE GREENS EAST HOMEOWNER ET AL

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty:
Joshua B. Clark [College Greens East Homeowner; Eugene Burger Management Corp.]
Brian A. Paino [Cenlar F.S.B.; San Francisco Fire Credit Union]

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

Adv. Filed: 9/12/13
Answer: none

Nature of Action:
Other - e.g. other actions that would have been brought in state court if unrelated to bankruptcy case
Declaratory judgment

12. 12-35521-E-13 CHRISTOPHER DEAN — **CONTINUED MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
13-2289 PGM-1 — **3-3-14 [51]**
DEAN V. COLLEGE GREENS EAST HOMEOWNER ET AL

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

13. 12-35521-E-13 CHRISTOPHER DEAN
13-2289 SC-1
DEAN V. COLLEGE GREENS EAST HOMEOWNER ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
10-21-13 [20]

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 6, 2014.** No appearance required at the April 29, 2014 hearing.

14. 10-37127-E-13 BARRY/COLLEEN PAGE
SS-6 Scott D. Shumaker

MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTORS' ATTORNEY
4-1-14 [95]

Local Rule 90134-1(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 creditor, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative 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).

The court's tentative decision is to deny the Motion for Compensation. 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:

Law Offices of Scott Shumaker, Counsel for Debtor, seeks additional attorney fees in the amount of $2,862.00. Counsel argues that these additional fees are justified in this case due to the extensive work done by Counsel, including having to file numerous motions in excess of that originally contemplated by the parties.

Counsel argues that after exercising reasonable billing judgment, the total number of hours sought for compensation is 31.8 hours. Counsel states his customary hourly fee for this client is $250.00 per hour and $125.00 per hour for paralegal work. Counsel argues that a reasonable fee for the services rendered would be $6,362.50 minus $3,500.00 previously authorized by this Court for a balance of $2,862.50.

No description of the services for which the additional fees are requested is provided in the motion or supporting pleadings.

TRUSTEE'S LATE FILED OPPOSITION

The Chapter 13 Trustee filed a late opposition on April 22, 2104. Opposition must be filed fourteen days before the hearing, April 15, 2014 for this calendar.

Trustee argues that the Billing Time Sheets and Analysis (court document #98) lists the fees for attorney time and paralegal time for Case Preparation, Motions to Value, Motion to Incur debt, Motions to Confirm, Motion for Additional Fees, and Miscellaneous Case Management Tasks. The Motion states that the Attorney has received $1,100.00 to date for fees through the plan but the Trustee's record indicates that Counsel has received $1,125.00 to date (including the March 31, 2014 disbursement). Trustee states that a total of $375.00 remains to be paid to Counsel of the initial $3,500.00 "no look fees" through the plan.

Trustee also argues that the attorney should provide in the motion what substantial and unanticipated work was done post-confirmation, as well as explaining why compensation should be allowed for that work, unless the attorney is arguing that the local rule does not apply.

Additionally, the Trustee states that while additional fees of $2,862.50 are being sought by this Motion, and $375.00 remains to be paid of the initial fees, Debtor only proposes to pay another $1,500.00 into the case according to the pending Motion to Modify Plan set for hearing on May 6, 2014. The instant Motion indicates that "the attorney will only be paid fees through the plan to the extent that funds are available. The remainder of fees shall be collected directly from the Debtors, if at all." Trustee states the attorney has not estimated the amount of the fees to be paid directly by the Debtor. The Trustee is not certain that Debtors are aware of the additional fees being requested, or that they may be billed for the remaining unpaid fees after the case is completed.

Lastly, the Trustee disputes various expenses in the amount of $725.00. These entries include an entry for "Various TC with Client re supplemental declaration" and three entries for "Various TC and emails re modifying plan." Trustee argues that these tasks are described as "various" and that more information is required to determine what work was done and how much time should be allowed for it.

DISCUSSION

Even without the Trustee's late filed objection, the court has concerns regarding the request for additional fees. The motion seeks fees under 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016(a) with Counsel admitting to opting to represent the Debtor pursuant to the "Rights and Responsibilities" procedure. However, Local Bankruptcy Rule 2016-1(c)(3) states,

> Generally, this fee will fairly compensate the debtor's attorney for all pre confirmation services and most post

> confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. **Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.**

(emphasis added). Counsel has not addressed what substantial and unanticipated work was done post-confirmation. Furthermore, a review of the billing time sheets (for which a task billing analysis or explanation was not provided) reveals time for Case Preparation, Motions to Value, Motion to Incur debt, Motions to Confirm, Motion for Additional Fees, and Miscellaneous Case Management Tasks. The court cannot discern which of these were "substantial and unanticipated" from the raw billing records.

The court also agrees with the Trustee's objection to the vague billing entries for "various" telephone calls and emails regarding modification and declarations. The court cannot determine if these fees are reasonable based on the vague descriptions provided.

Based on the foregoing, 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 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 denied without prejudice.

15. 14-20327-E-13 JAMES/CHARLI BARTEAU MOTION TO CONFIRM PLAN
DBJ-2 Douglas B. Jacobs 3-18-14 [18]

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 March 18, 2014. By the court's calculation, 42 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 grant 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 Chapter 13 Trustee opposes the motion on the basis that the Debtor referred to a lawsuit in the Statement of Financial Affairs, but did not list the lawsuit as an asset on Schedule B or claimed an exemption in it. Trustee states that in the event the lawsuit has any value, the plan pays no less than 0% to unsecured creditor and would not pay what they would receive in the event of a Chapter 7.

The Trustee also opposes confirmation offering evidence that the Debtor is $2,908.78.00 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).

DEBTOR'S RESPONSE

Counsel for Debtor states that there was a mathematical error in preparing the amended plan and he miscalculated the number of payments that Debtor had made. Counsel states that the Additional Provisions section should reflect that Debtors have paid $5,817.56.

Counsel also states that the Debtors have amended their schedules to list the lawsuit for quiet title. They do not know the value of the lawsuit, but anticipate a strong and aggressive defense to the action.

The Debtor having addressed the Trustee's concerns, the court grants the motion to confirm, with the aforementioned changes.

The amended Plan does comply 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 Motion to Confirm the Plan is granted, Debtor's Chapter 13 Plan filed on March 18, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. 09-38433-E-13 RLC-1 GARY/SHERYL RAWLINSON Stephen M. Reynolds

CONTINUED MOTION FOR HARDSHIP DISCHARGE
2-6-14 [93]

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, all creditor, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Hardship Discharge 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 has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to continue the hearing on the Motion for Hardship Discharge to 3:00 p.m. on May 6, 2014. No appearance at the April 29, 2014 hearing is required.

MARCH 11, 2014 HEARING

At the hearing the court and parties addressed that the motion for hardship discharge should be addressed in connection with a motion to modify the plan given that there are two Debtors in this case (who are now divorced).

The hearing on confirmation is set for 3:00 p.m. on May 6, 2014. Therefore, the court will continue the hearing to that date and time.

REVIEW OF MOTION

Debtor Shreyl Brewer, formerly Sheryl Rawlinson, ("Movant") seeks a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtor state that during this case she and co-debtor Gary Rawlinson separated and divorced, with Mr. Rawlinson remarrying. Movant states that she was laid off by her employer on December 31, 2013 as part of a reduction in force. Movant states it is unclear when she will obtain new employment and will not be able to make the plan payments she was making before (half of the plan payment).

TRUSTEE'S OPPOSITION

The Trustee objects to the Debtor's request for hardship discharge on the basis that Debtor may have failed to provide sufficient information to explain why a modification of the plan is not practicable. Trustee states that Debtor has failed to provide a current list of income and expenses and Movant's declaration indicates she is receiving unemployment income. Debtor does not provide any income information from Mr. Rawlinson or a list of expenses for both Debtors.

The Trustee notes that February 2014 is month 54 of a 60 months plan, and the Debtors are current. The plan proposes to pay a 25% dividend to unsecured claims, with the Trustee disbursing just over 85% to the unsecured claims. No secured or priority claim balances remain to be paid.

DISCUSSION

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

The court agrees that Movant has not provided sufficient evidence regarding 11 U.S.C. § 1328(b)(3): modification of the plan is not possible under 11 U.S.C. § 1329. Debtors have not provided current income and expense statements or an analysis of how modifying the plan is not possible at this time.

Based on the foregoing, 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 Hardship Discharge 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 is continued to 3:00 p.m. on May 6, 2014.

17. 13-36233-E-13 JLB-1 — MARK/EVELINA PANANGANAN — James L. Bianchi — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. — 3-26-14 [40]

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 Chapter 13 Trustee, respondent creditor, parties requesting notice, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 34 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 without prejudice. 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 seek to value the collateral of JP Morgan Chase Bank, N.A. However, service is not proper. Debtors served JP Morgan Chase Bank, N.A. at an address in New York, New York. The address specified on the Federal Deposit Insurance Corporation website is 1111 Polaris Parkway, Columbus, Ohio. The court has no way of determining that service at the New York address complies with Federal Rule of Bankruptcy Procedure 7004, 9014.

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 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 Value Collateral is denied without prejudice.

18. 09-36051-E-13 ROSELLEN SMITH — MOTION TO SELL
ACK-1 Aaron C. Koening — 4-7-14 [44]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 7, 2014. By the court's calculation, 22 days' notice was provided. 21 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 Permit Debtor to Sell Property. 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 4607 Plantation Drive, Fair Oaks, California. The sales price is $250,000.00 and the named buyer is the Abassi trust U/T/A (Tarik and Sheila Abbasi). In the Motion Debtor states that "the cash from buyer is $253,748.98" but the purchase agreement shows that the purchase price is $250,000.00. The terms are set forth in the Purchase Agreement, filed as Exhibit D in support of the Motion. Dckt. 47.

Trustee's Limited Opposition

The Trustee requires clarification regarding the estimated closing statement in Exhibit A, Dckt. 47 for "BK Release to Attorney." (Item 1307, 1300. Additional Settlement Charges). The Trustee does not object to the proposed sell of the real property.

Debtor's Response

In her response, Debtor claims the real estate agents conducting the short sell were willing to pay $1,000 to get court approval of the short sell. The "BK Release to Attorney" represents these funds. Debtor also claims that once the short sale is approved, he will file the application for compensation and itemize the work done on the case.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to sell property 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 Rosellen M. Smith, the Chapter 13 Debtor ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b)to Tarik Abbasi, Sheila Abbasi, Abbasi Trust or nominee ("Buyers"), the residential real property commonly known as 4607 Plantaion Drive, Fair Oaks, California("Real Property"), on the following terms:
>
> 1. The Real Property shall be sold to Buyer for $250,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit D in support of the Motion. Dckt. 47.
>
> 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 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Debtor be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's broker Kimberly Tucker, Sierra Foothills Real Estate Services.

5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

19. 12-37353-E-13 TOG-11 | **JORGE VARELA AND LILIA ORTIZ** | **Thomas O. Gillis** | **OBJECTION TO CLAIM OF INVESTMENT RETRIEVERS, INC, CLAIM NUMBER 28** | **3-14-14 [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 Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 46 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 28 of Investment Retrievers, Inc. is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 28 on the court's official claims registry, asserts $24,052.89 claim. The Debtor objects to the Proof of Claim on the basis that it was not timely filed. *See* Fed. R. Bankr. P. 3002(c).

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 deadline for filing a Proof of Claim in this matter was June 23, 2013. The creditor's claim was filed August 16, 2013.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Investment Retrievers, Inc. filed in this case 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 objection to Proof of Claim number 28 of Investment Retrievers, Inc. is sustained and the claim is disallowed in its entirety as untimely.

20. 09-43956-E-13 RAFAEL/ELSA MARTINEZ — MOTION TO MODIFY PLAN
DBJ-2 Douglas B. Jacobs — 3-19-14 [43]

Final Ruling: The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Modify Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Motion to Modify Plan.**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Modify Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

21. 14-21158-E-13 ANDRE WILLIAMS **OBJECTION TO DEBTOR'S CLAIM OF**
NLE-2 Pro Se **EXEMPTIONS**
3-26-14 [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 (*pro se*) on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Final Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is overruled. No appearance required.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added).

The court's review of the docket reveals that the spousal wavier was filed on April 21, 2014. Dckt. 43. The Trustee's objection is overrule.

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 Exemptions 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 overruled.

22. 10-42260-E-13 CHAND SINGH — MOTION FOR COMPENSATION FOR
PGM-5 Peter G. Macaluso — PETER G. MACALUSO, DEBTOR'S ATTORNEY
3-31-14 [82]

Local Rule 90134-1(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 creditor, and Office of the United States Trustee on March 31, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative 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).

The court's tentative decision is to grant the Motion for Compensation. 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:

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of $2,000.00. 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. Motion to Modify. Counsel suggests this was unanticipated, as Debtor received a Motion/Application to Dismiss filed by the Trustee; and

2. Adversary Proceeding. Counsel suggests this Adversary Proceeding was unanticipated, as the Creditor improperly increased the post-petition mortgage payments allegedly pursuant to a post-petition escrow analysis pursuant to R.E.S.P.A. by including pre-petition claims in escrow analysis.

The hourly rates for the fees billed in this case are $200.00/hour for counsel for 10.00 hours of unanticipated and substantial work.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee states he is not certain the additional fees for the Motion to Modify are warranted in this case based on the Rights and Responsibilities filed August 20, 2010. On page 2 the form states that "the attorney agrees to provide the following legal services." Item 5 states that the attorney shall "prepare, file and serve necessary modifications to the plan which may include suspending, lowering, or increasing plan payments."

COUNSEL'S RESPONSE

Counsel responds, stating that he is not seeking fees for the modification due to the motion to dismiss, but rather the adversary proceeding (Case No. 11-02049). Counsel argues that the Adversary Proceeding was unanticipated as the Creditor improperly increased the post-petition mortgage payments allegedly pursuant to a post-petition escrow analysis pursuant to R.E.S.P.A. by including pre-petition claims in the escrow analysis. Counsel states he did over 18.50 hours (approximately $3,700.00 at $200.00/hr) but is only seeking 10.00 hours of work at $2,000.00 total, which will not prompt another modification of the plan.

DISCUSSION

Based on the foregoing explanation, 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 $2,000.00 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.

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 Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Peter G. Macaluso, Counsel for Debtor Applicant's Fees Allowed in the amount of $ 2,000.00.

23. 13-28763-E-13 NADINE ADKINS — MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria — 3-21-14 [41]

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 March 21, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. That requirement was met.

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 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).

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 Confirm the Modified Plan. No appearance at the April 29, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee responds to the Motion to Modify on the basis that the amount provided for priority creditors are the opposite of the amount claimed. Debtor states in the Motion to Modify, Dckt. No. 41, that one of the reasons for the modified plan is to properly provide for priority creditors, Franchise Tax Board and Internal Revenue Service.

The proposed modified plan lists Franchise Tax Board with a claim of $7,207.04, and lists the Internal Revenue Service with a claim of $5,625.41. According to the Trustee's records, it appears that the Franchise Tax Board filed a Proof of Claim, Court Claim No. 13-1, on August 26, 2013, and that the priority portion is in the amount of $5,625.41. The records also reflect that the Internal Revenue Service filed Proof of Claim 3-1 on July 11, 2013, and that the priority portion is in the amount of $7,207.04.

Because the total amounts appear the same, Trustee believes that this is a typographical error, and accepts that Debtor and court may have this corrected in the order confirming.

REPLY TO TRUSTEE'S RESPONSE

Debtor acknowledges that the balances owed to the Internal Revenue Service and Franchise Tax Board were erroneously reversed in the Debtor's First Modified Chapter 13 Plan. Debtor has no objection to correcting the error in the order confirming.

The Debtor having amended the Plan to correctly state the amount of the Internal Revenue Service claim to be $7,207.04 and the Franchise Tax Board claim to be $5,625.41, the Trustee's objection is resolved.

The proposed Chapter 13 Plan complies with 11 U.S.C. §§ 1322, 1325, and 1329, the Motion is granted, and the Plan, as amended, 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, and the Debtor's First Modified Plan filed on March 21, 2014, as amended to provided for the Class 5 Creditor Franchise Tax Board Claim in the amount of $5,625.41, and for the Class 5 Creditor Internal Revenue Service Claim in the amount of$7,207.04. Counsel for the Debtor shall prepare an appropriate order confirming the First Modified Chapter 13 Plan, stating the above amendments, 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.

24. 13-31164-E-13 JANET LEMERE **MOTION TO CONFIRM PLAN**
PGM-1 Peter G. Macaluso **3-17-14 [35]**

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, and Office of the United States Trustee on March 17, 2014. By the court's calculation, 44 days' notice was provided. 42 days' notice is required. That requirement was met.

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 Debtor has 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 March 17, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. 10-26265-E-13 PABLO/ROBIN PADILLA **MOTION TO APPROVE LOAN**
WSS-3 W. Steven Shumway **MODIFICATION**
3-27-14 [46]

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, respondent, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative 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 Motion to Approve the Loan Modification is denied without prejudice. 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 seek an order approving a Loan Modification Agreement with Deutsche Bank National Trust Company as Trustee For Indymac Indx Mortgage Loan Trust 2007-Flx6, Mortgage Pass-Through Certificates Series 2007-Flx6 ("Lender"). On its face the Motion states that the agreement is with Deutsche Bank National Trust Company, Trustee. The Motion appears to inadvertently (or possibly intentionally) not make reference to any contract being filed as an exhibit to state the terms of a modification between the Debtors and Deutsche Bank National Trust Company.

Robin Padilla, one of the Debtors, testifies under penalty of perjury that "We have negotiated a modification of this loan with our lender..." Dckt. 48. However, while making that statement under penalty of perjury, Ms. Padilla inadvertently (or possibly intentionally) does not disclose the identity of the "lender" with whom she has personally negotiated a loan modification.

Debtors' counsel, Stephen Shumway, has filed his Declaration in support of the present Motion. Dckt. 49. Mr. Shumway states under penalty of perjury that he has received a letter from "the current servicer" of the Debtors' loan, and that a copy of the letter is filed as Exhibit B. While saying he received a letter from an unnamed loan servicer, Mr. Shumway does not provide any testimony under penalty of perjury that he has personal knowledge that Deutsche Bank National Trust Company, Trustee is the creditor.

Mr. Shumway further testifies that he checked the California Secretary of State's website for corporate information, but could not find any information for Deutsche Bank National Trust Company. Having exhausted that one resource, counsel stopped trying to locate the party whom he believes is the creditor.

Exhibit B is a letter on Ocwen Loan Servicing, LLC letterhead. The letter is not written to Mr. Shumway, but to Robin Padilla, one of the Debtors. Presumably Mr. Shumway obtained a copy of the letter from his client, and is seeking to testify that his client told him that Ocwen Loan Servicing, LLC told her that Deutsche Bank National Trust Company, Trustee is the creditor.

Counsel for the Debtors is correct, he will not find an address for Deutsche Bank National Trust Company with the California Secretary of State. As has been disclosed to this court in other hearings, this entity is a federally chartered bank with the United States Comptroller of the Currency. It appears that no attempt was made to learn that information from any other sources, such as an internet search or to contact Ocwen Loan Servicing, LLC to obtain confirmation and a service address. If Ocwen Loan Servicing, LLC would not voluntarily disclose that information (which would raise serious good faith issues for both the servicing company and its clients), Federal Rule of Bankruptcy Procedure 2004 gives Debtors' counsel broad, easy to use discovery to force the disclosure of this information.

In the court's ruling on the prior Motion to approve a loan modification, the court expressly addressed the defects in the pleadings in not providing the court with a legally recognizable entity with whom the Debtors are to contract. Civil Minutes, Dckt. 42. In that ruling, the court address how the purported contract was between the Debtors and some entity identified as IndyMac Mortgage Services. There is no such entity which the court could identify as legally existing anywhere. In the context of other proceedings and basic internet searches information indicates that it is merely a department of OneWest Bank, FSB, not a separate legal entity which could be a creditor to contract with the Debtors.

The contract which the Debtors request for authorization to enter into has been filed as Exhibit A in support of the Motion. Dckt. 50. The Debtors seek to enter into a loan modification with "IndyMac Mortgage Services." In addition to this not being an entity which the court can identity as legally existing, the Motion states that the creditor is Deutsche Bank National Trust Company, Trustee. For the court to approve this contract would be to authorize the Debtors to contract with a non-creditor, potentially dooming them (and their counsel) to a terrible surprise in several years when whomever the loan is transferred to asserts

that no owner of the note ever entered into an agreement to modify it. The Debtors (and counsel) could well be left to trying to figure out who is IndyMac Mortgage Services and whether it is someone who can be sued for the damages caused to the Debtors.

OPPOSITION BY TRUSTEE

Trustee states that Debtors incorrectly state that the monthly principal, interest, taxes and insurance payment is $2,041.13. Dckt. No. 46. Per the Home Affordable Modification Agreement, Dckt. No. 50, page 9, the correct amount of $2,467.55 which includes an estimated escrow payment amount.

While the Trustee has an issue with the technical computation of the amount of the modification, he has not raised an issue as to why the Debtors are entering into a modification with someone other than the creditor.

REPLY BY DEBTORS

Debtors state that they stipulate that under the loan modification, their principal, interest, taxes and insurance payment will be reduced from $2,471.82 to $2,467.55 per month. However, this does not address the substantive defect that they want to enter into a loan modification with an unidentifiable entity which is not a creditor in the case.

The court is gravely concerned that counsel, after having checked one website, merely threw in the towel and requested the court issue an order for his client to contract with a non-entity which clearly is not the creditor. If Ocwen Loan Servicing, LLC is the loan servicer, then counsel has a ready source for information and correct loan modification documentation. Instead, it appears that expediency in just getting anything authorized by the court has trumped presenting the court with an agreement between the Debtors and a creditor.

The Motion is denied without prejudice. FN.1.

FN.1. The federal judicial process is not one in which a party repeatedly files defective motions improperly requesting relief in an effort to wear down the court. If such a patently defective motion is filed a third time, it may well be denied with prejudice and counsel can address for his client why they will be unable to modify their loan during the period of this bankruptcy 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 Approve the Loan Modification 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 is denied without prejudice.

26. 14-23365-E-13 FLOYD/DAWN WEBB **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 Peter G. Macaluso **4-15-14 [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 all creditors, Chapter 13 Trustee, and Office of the United States Trustee on April 15, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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 (Case No. 13-26764) was dismissed on February 19, 2014, after Debtors defaulted on their plan payments. *See* Order, Bankr. E.D. Cal. No. 2013-26764, Dckt. 63, February 19, 2014. 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 Debtors 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).

The current Chapter 13 case was filed on April 1, 2014. Debtors filed a Chapter 13 Plan concurrently with the bankruptcy petition, and assert that the plan is confirmable and likely to complete given the Debtors' income and expenses. The current plan provides for payment of the first deed of trust and arrears, state and federal taxes, and attorney fees. The payments required are set at $2,220.00 per month for sixty months.

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.

GROUNDS STATED BY DEBTORS FOR RELIEF

Debtors state that the instant case was filed in good faith and that good cause exists for the granting of the Motion to Extend Automatic Stay as to all creditors in this case. Debtors assert that the extension is necessary to protect the debtor's assets, absent the instant filing, "as the debtor's current case overcomes any presumption of bad faith." The instant case was filed in order to cure pre-petition arrears owed on the primary residence and to satisfy tax debt.

The debtor is employed with DS Waters of America, has been employed for more than fourteen years, has a current gross monthly income of $2,893.12, deductions of $994.72, and a net monthly income of $1,898.40. The Debtor's spouse is employed with Am Trust Financial Services, has been employed for more than four months, has a current gross monthly income of $2,669.32, deductions of $434.27, and a net monthly income of $2,235.05. Debtors' Schedule I and B22C reflect that they are earning enough wages and money to cover all of their necessary obligations, in addition to the proposed chapter 13 plan.

Debtors assert that they are able to make the $2,220.00 monthly payments, can fund the current plan, and obtain a discharge. Debtors maintain that they have not engaged in any type of scheme or other operation to abuse the bankruptcy process.

In purporting to rebut the presumption of bad faith in this case, Debtors merely assert that they have "satisfactorily shown that the instant case was filed in good faith, and that there is sufficient justification to

extend the automatic stay as to all creditors." Dckt. No. 14. Debtors have not discussed the second issue raised in the analysis, conducted to determine whether a case was filed in good faith under § 362(c)(3) and *Elliot-Cook*, 357 B.R. at 814-815.

Review of Specific Grounds Stated in Motion (Fed. R. Bankr. P. 9013)

With respect to the presumption of bad faith, the sum total of the specific grounds stated by the Debtors to rebut that presumption consists of,

> "**Although the dismissal of the debtor's previous case raises** the presumption of bad faith, the debtors assert that they have satisfactorily shown that the instant case was filed in good faith and that there is sufficient justification to extend the automatic stay as to all creditors."

Motion [emphasis in original], Dckt. 14.

Rather than stating grounds, the Debtors merely provide the court with their legal conclusion. The prior statements in the Motion do not address why the first case was dismissed, necessitating the good faith filing of the second case. Rather, the Motion merely discusses why the Debtors can easily perform the plan which requires monthly plan payments of $2,220.00. Plan, Dckt. 5.

Debtors have not alleged in their Motion what has changed, so that Debtors' new plan and current case will succeed. In Debtors' previous case, Case No. 13-26764-B13J, the Trustee filed a Notice of Default and Application to Dismiss Debtors' case on the basis that Debtors had not made all payments due on the plan. The payments required under the Plan in the prior Chapter 13 case were $2,100.00 a month, less than required under the Plan in the current case. 13-26764 Objection to Confirmation and Motion to Dismiss, Dckt. 15; Confirmed First Amended Plan, Dckt. 27.

As of the Trustee's filing of their Application to Dismiss on November 5, 2013 in their previous case, Debtors were delinquent in the amount of $4,600.00. Debtors failed to cure the delinquency and make all subsequent payments that were due on the next 30 days upon the filing of the Notice and Application. Additionally, Debtors did not file a written objection with the court and make the required payments. The Application was granted and the case was dismissed for Debtors' failure to make the plan payments. *See* Order, Bankr. E.D. Cal. No. 2013-26764, Dckt. 62, February 19, 2014.

In support of the present Motion the Debtors have provided their Joint Declaration. Dckt. 16. In the Declaration the Debtors provide their personal conclusions of law and summarize the terms of the Plan which they are proposing in this Chapter 13 case. Though absent from the Motion which must state with particularity the grounds for the requested relief (Fed. R. Bankr. P. 9013), the Debtors sneak some additional grounds into their declaration. These are,

> 10. We are refiling bankruptcy due to financial hardship. After we filed, Dawn (co-Debtor) was laid off from her job. She was unable to collect unemployment and we were unable to get on top of payments, this happened right after we filed.
>
> 11. Since our case was dismissed, our situation has changed. We have been able to get back on our feet by working with a budget. Dawn is now working full time and we are sure we are on the right track to succeed with this plan.

Declaration, Dckt. 16.

Debtors have not presented any change in circumstances or grounds in their Motion which would warrant the relief they are requesting. Rather, on the face of the Motion the Debtors have not rebutted the presumption that this case was not filed in good faith. Rather, they merely state in the Motion as to why, if they were starting from a blank slate, the court should believe that they could prosecute the current case.

The Debtors are fortunate that (1) the court has done the work of counsel to ferret out facts and grounds upon which the relief would be justified, and (2) the court has done the work of counsel to "state with particularity" those grounds as if they were in the Motion. The court accepts as truthful the testimony that the co-Debtor lost her job after the prior case was filed and that cause the Debtors being unable to make the $2,100.00 a month payments. FN.1.

FN.1. However, this statement does raise credibility issues for the Debtors and their counsel. The Debtors never disclosed this loss of income in responding to the Motion to Dismiss and the Objection to Confirmation of the Modified Plan in the prior case. In the Reply to the Objection to Confirmation, the Debtors merely stated that they would be current by the time of the hearing (without explanation as to the reason for the default or how the Debtors could come up with multiple months of projected disposable income in one month.) 13-26764 Dckt. 56.

More significantly, it appears that the Debtors and counsel affirmatively misrepresented the reason for the default in the prior case, stating in the Motion to Confirm the proposed Modified Chapter 13 Plan, Dckt. 42,

> "3. Due to a change in circumstances, Debtors cannot complete the plan as originally confirmed as stated under penalty of perjury in the accompanying Declaration of Debtors. In that Declaration Debtors state, 'We had some unexpected household expenses that caused us to fall behind on our Plan payments. We have gotten caught up now and expect to be able to make timely Plan payments. We are also pursuing a loan modification for our home.'"

In the Declaration, Dckt. 44, reference in the above Motion, the Debtors state under penalty of perjury,

> "2. We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; We had some unexpected household expenses that caused us to fall behind on our Plan payments. We have gotten caught up now and expect to be able to make timely Plan payments. We are also pursuing a loan modification for our home."

Nothing is said in the Motion to Confirm Modified Plan or the Declaration in the prior case to the co-Debtor having lost her job and that loss of income cause the defaults under that plan, as they now testify under penalty of perjury in the current case.

This court has previously warned all attorneys about "liar declarations" and federal court practice is not one in which gain is obtained by lying as fast as one can until caught. The Debtors and their counsel (who was the Debtors' counsel in the prior case) have exhausted there credibility in this case and need to carefully document why and how their testify is correct and pleadings prepared by counsel in this case (and other cases) is prepared in good faith, is accurate, and truthful. The court shall bring to the attention of the judges in the court in which the previously case was pending and the conflicting statements under penalty of perjury and in the pleadings in the is case and the prior case.

The court grants the Motion to Extend the Automatic Stay, notwithstanding the pleading defects and inconsistent statements under penalty of perjury. The court leaves it to creditors, U.S. Trustee, and the Chapter 13 Trustee to keep the Debtors and counsel "honest" in what they present to the court. For its part, the court will carefully review pleadings filed to insure that competent, sufficient testimony is provided and that pleadings clearly state grounds with particularity (motions) and authorities (points and authorities) which are supported by applicable law.

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 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 To Extend the Automatic Stay pursuant to 11 U.S.C. § 362(c)(3)(B) is granted, and the automatic stay is extended for all purposes and creditors until terminated or modified by operation of law or further order of the court.

27. 13-26966-E-13 NORA MILLER-LA CROIX MOTION TO DISMISS CASE
MRL-1 Mikalah R. Liviakis 4-14-14 [30]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 14, 2014. According to the court's calculations, 15 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss 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 Dismiss and dismiss 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 move to dismiss their Chapter 13 case pursuant to 11 U.S.C. § 1307(b). Debtors argue that the case has not been converted previously and they are entitled to the dismissal.

Pursuant to 11 U.S.C. § 1307(b), on the request of a debtor, if the case has not been converted under section 706, 1112, or 1208 of Title 11, the court shall dismiss the case. Here, the case has not been previously converted under any section of Title 11.

Debtor states that one of the primary factors that led Debtor to file this chapter 13 case was an inability to workout a dispute concerning monthly payments to Bank of America based on its promissory note and first deed of trust against Debtor's residence (a residential home located at 3619 60th Street, Sacramento, CA 95820). When Debtor filed this case Bank of America, Debtor had an arrears on her mortgage of approximately $12,000. The Chapter 13 case and the Plan (confirmed in the case on July 31, 2013, Dckt. No. 22) helped Debtor maintain her residence and begin to catch-up on the arrears asserted by Bank of America, but the monthly plan payments obligations "have been a strain."

Recently, Debtor's sister has applied for and been approved for a loan sufficient to pay off the claim of Bank of America. Debtor maintains that if her sister pays off Bank of America's mortgage claim, this would help Debtor maintain her home without continuing inside her chapter 13 case. Debtor will be able to afford to stay in the home, but also the payments to most other creditors as well. As Debtor will be able to afford to make most of her payments outside of bankruptcy, there will be no reason to remain in the time-consuming and expensive process of bankruptcy.

The Debtor has not filed a bankruptcy case in this court in the last eight years and there is no indication that the dismissal is part of an improper creditor fraud strategy. It appears that the Debtor has prosecuted the case to date in good faith and consistent with her confirmed plan. The Plan provided for 100% of unsecured claims to be paid in full and to cure the arrearage on the claim secured by Debtor's home.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the 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 to Dismiss is granted and the case is dismissed.

28. 13-35366-E-13 CAH-4 ALFRED/CAROLYN SHULTS C. Anthony Hughes MOTION TO VALUE COLLATERAL OF RICHARD ROGERS AND LANA MUNGER 3-26-14 [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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

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 Debtors' declaration. The Debtors are the owner of 20 Acres of unimproved land, with a mobile home (which is asserted to be "condemnable"), and an 1800 square foot Butler Building located at 3401 Freshwater Lane, El Dorado, California. The Debtors seek to value the property at a fair market value of $2,500.00 as of the petition filing date. As the owner, the Debtors' 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 property was purchased from two couples, Harry and Leah, and Richard Rogers and Lana Munger. The 20 acres of land is secured by a 1st and 2nd deeds of trust in favor of the Millers and Rogers/Munger, respectively. Pursuant to a State of California Department of Housing and Community Development, the mobile home is secured by a Certificate of Title on a 1961 Silverwood Silvercrest Mobile Home. The first lien is held by the Millers and the junior lienholders are Richard Rogers and Lana Munger. Exhibit A, Dckt. No. 41. Both the first position and junior lienholders have filed proofs of claim in this case.

The first deed of trust secures a loan with a balance of approximately $8,195.70. Creditors' Richard Rogers and Lana Munger hold a second deed of trust in the Debtors' property, securing a loan with a balance of approximately $21,961.46. 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 Richard Rogers and Lana Munger secured by a second deed of trust recorded against the real property commonly known as 3401 Freshwater Lane, El Dorado, 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 $2,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. 13-31068-E-13 KELLY HARWELL **MOTION TO MODIFY PLAN**
MMM-1 Mohammad M. Mokarram **3-20-14 [21]**

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 the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. That requirement was met.

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 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). 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 Confirm the Modified Plan. No appearance at the April 29, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 March 20, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 10-39573-E-13 JUSTIN/LAURA GRAVES
SS-10 Scott D. Shumaker
MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTOR'S ATTORNEY
3-25-14 [136]

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, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 tentative decision is to grant the Motion and allow $6,000.00 for additional fees and costs for unanticipated and substantial post-confirmation legal services, and deny the balance of the fees and costs requested. 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:

FEES REQUESTED

Scott Shumaker, Counsel for the Debtors ("Counsel"), makes Motion for Compensation pursuant to 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016(a). Counsel does not disclose the period of time for which he requests fees. Counsel states that he has served as attorney of record for Debtors since June 30, 2010. On or before July 26, 2010, Counsel received a retainer for services of $2,000.00 and the parties agreed to $3,500 in attorneys' fees as total compensation for the administration of this Chapter 13 case.

As part of the Chapter 13 representation, Counsel represents the Debtors pursuant to the terms of a "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," and "Guidelines for Payment of Attorney Fees in Chapter 13 Cases." Counsel state that to date, he has received a total of $1,075 for attorney's fees through the Plan, but that the initial agreed-upon fee is not sufficient to fully compensate Counsel for legal services rendered. Counsel refers the court's attention to the time sheets/bill filed in support of the Motion, purportedly detailing the services rendered to the Debtors in connection with this Chapter 13 case since the date Counsel commenced rendering services. The subject time sheets are kept in the normal course and scope of the business affairs of Counsel's office.

Counsel states that the fees are justified in this case "due to the extensive work done by Attorney and his staff in this case including having to file numerous motions in excess of that originally contemplated by the parties." Dckt. No. 136 at 2.

Description of Services for Which Fees Are Requested

Counsel indicates that his additional work has included tasks related to case preparation, pre-filing work, three court appearances in addition to the appearance at the Creditor Meeting as a result of the "numerous motions" that this case has required, four motions to value, one motion to avoid lien, three motions to modify, a motion for fees, and other "miscellaneous time administering" the Chapter 13 case.

REVIEW OF MOTION

When disputes arise concerning motions, often it is proper for the court to start with a review of the motion and the grounds stated with particularity (Fed. R. Bankr. P. 9013). The present Motion states in pertinent part,

A. Counsel has served as the attorneys for the Debtors since June 30, 2010.

B. The Debtors and Counsel agreed to a $3,500.00 attorneys' fee for services in this case and a $2,000.00 retainer was paid.

C. For the Chapter 13 case, Counsel elected to represent the Debtors pursuant to the terms stated in the Rights and Responsibilities Form Filed in this case. [That form states that the initial fees are $3,500.00, and that counsel may seek more fees if the initial fees are not sufficient to compensate counsel. Dckt. 7.]

D. The $3,500.00 in fees are not sufficient, as "counsel and his staff" have been required to file numerous motions in excess of those originally contemplated.

E. Counsel asserts that reasonable fees for the legal services provided is $11,247.50. This is $7,747.50 in excess of the $3,500.00 amount.

F. Counsel does not seek to have the plan payments increased for the additional fees, but will collect the money from the Debtors after they get their discharge.

G. For the court's "edification" only (apparently believing that pleading such grounds is not necessary), the Motion provides the following task billing analysis,

1. Case Preparation.....$1,487.50
2. Court Appearances (not by item).....$2,150.00
3. Motions to Value.....$ 775.00
4. Motions to Avoid Lien.....$ 350.00

5. Motions to Modify.....$3,100.00
6. Motion for Fees.....$ 612.50
7. Misc.....$2,587.50
8. Costs (Copy and Postage).....$ 185.00

For totals of $7,775.00 attorney billings ($250.00 an hour), $3,287.50 paralegal billings ($125.00 an hour), and costs of $185.00

Motion, Dckt. 136.

The Motion neglects to identify for the court that in confirming the Chapter 13 Plan in the case Counsel elected to have the court approve a "no-look" fee of $3,500.00 in this case. Order, Dckt. 50. It is by this order that Counsel was approved $3,500.00 in attorneys' fees and could be paid such fees from the retainer and by the Chapter 13 Trustee through the Plan.

With respect to the Local Bankruptcy Rules governing attorneys' fees in Chapter 13 case, Counsel responds to the Chapter 13 Trustee's objection, stating that any "requirement" of Local Bankruptcy Rule 2016-1(c)(3) that excess confirmation fees cannot be compensated beyond the original fees awarded pursuant to a Rights and Responsibilities is merely a suggestion, and not a requirement. FN.1.

Counsel further states that the Rights and Responsibilities filed in this case does not distinguish between pre and post-confirmation work, and provides no waiver of pre-petition fees. The Rights and Responsibilities expressly states, "If the initial fees ordered by the court are not sufficient to compensate the attorney for the legal services rendered in the case, the attorney further agrees to apply to the court for any additional fees."

FN.1. As developed below, this contention by Counsel strikes the court as being founded on Captain Barossa's interpretation of the Pirates' Code in the Pirates of the Carribean movie, "And thirdly, the [pirates'] code is more what you'd call 'guidelines' than actual rules. Welcome aboard the Black Pearl, Miss Turner." Pirates of the Caribbean: The Curse of the Black Pearl (2003). Counsel requests the court to jettison the Local Bankruptcy Rules and join on an adventure founded on "suggestions" and wherever the wind may blow the court.

OPPOSITION BY TRUSTEE

Trustee objects to the fees requested by the Motion on several different grounds. The $7,747.50 of additional fees is now being requested in the 45th month of a 60 month plan. The Billing Analysis, Dckt. No. 136, lists the fees for attorney time and paralegal time for Case Preparation, Motions to Value, Motion to Avoid Lien, Motions to Modify, Motion for Fees, Misc. and Costs.

The Motion seeks fees under 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016(a) and the Counsel admits to opting to representing the Debtors pursuant to the "Rights and Responsibilities" procedure. The attorney has not addressed this requirement of Federal Rule

of Bankruptcy Procedure 2016-1(c)(3), which expressly governs debtor's attorney's fees in a Chapter 13 case.

Trustee disputes $1,0925.50 of the pre-confirmation fees claimed. Counsel provides itemized time sheets, but does not give the total work done post-confirmation or an identification of which work was substantial and unanticipated. The Plan in this case was confirmed on October 5, 2010. The plan provided for $3,500 in fees, and Trustee believes the total amount of fees claimed in the time sheets for prior to confirmation is $4,592.50, which is $1,092.50 more than the $3,500.00 provided for. (Total of Exhibit A, Dckt. No. 109, pages 3 and 4 in the September 28, 2010 entry).

Certain valuation and lien avoidance issues had not been addressed until orders were later entered on October 14, 2010, Dckt. No. 58, October 19, 2010, Dckt. No. 64, November 5, 2010, Dckt. No. 66, and November 15, 2010, Dckt. No. 69. Exhibits in support filed with the Motion, Dckt. No. 138 and the motion do not clearly state which fees are covered under the Rights and Responsibilities filed on July 24, 2010. Dckt. No. 7. The Exhibits, Pages 3-6, 8-12, as filed are categorized as in the Motion; however, no Docket Control Numbers are listed with any of the motions, making it difficult to follow.

Trustee Disputes $1,547.50 fees for the Motion to Modify, SS-7. Debtors sought to modify their plan unsuccessfully with the plan filed on December 7, 2012, Dckt. No. 88, and denied on January 21, 2013. Dckt. No. 111. The modification was denied, Dckt. No. 109. Debtor subsequently moved on February 5, 2013, to modify their plan successfully, Dckt. No. 120. Trustee does not believe the estate or Debtors received the $425.00 value for the court preparation and appearance (Dckt. No. 109, page 8, two January 15, 2013 entries) or the $1,122.50 value fo the Motion to Modify (Exhibit, Dckt. No. 3 109, pages 9-10, entries from December 8, 2012 through January 7, 2013).

Trustee disputes the $1,062.50 in "various" fees claimed post-confirmation. Counsel claims certain expenses post-confirmation, charted below:

Date	Description	Hours	Amount
10/1/2010-10/11/2010	"Various" TC with counsel for Citi Auto Finance, review and edit stipulation	1.5	$375.00
12/17/2012-1/7/2013	"Various" correspondence with client re objection to plan confirmation	1	$250.00

1/15/2013-2/4/2013	"Various" correspondence with Client re modifying plan	1	$250.00
3/1/2014-3/21/2013	"Various" correspondence with client re modifying plan and re loan modification	1.5	$187.50
71 days	**TOTALS**	**5**	**$1,062.50**

As to the first claimed fees, this appears to be a task that should have been accomplished prior to confirmation, and arguably may be excluded under Local Bankruptcy Rule 2016-1(c)(3)

The tasks include in their description the term "various," a range of dates (covering 71 dates in all), and a significant amount of time and compensation. Trustee believes more information is required to determine what date the work is done and how much time should be allowed. For instance, an hour for one letter to the client about an objection to confirmation, modifying a plan, or an hours and a half for one letter about modifying the plan and a loan modification, appears excessive.

REPLY BY COUNSEL

In addition to the contentions that Local Bankruptcy Rule 2016-1(c)(3) does not apply to Counsel's request for fees (other than as a possible "suggestion," Counsel provides the further responses to the Chapter 13 Trustee's Opposition.

In his response, Counsel makes further, vague allegations that since the confirmation of the original confirmed plan, a substantial amount of post-confirmation work has been performed which was not originally contemplated by the parties. Counsel states that "due to unforeseen changes in Debtors' financial condition," Counsel has had to modify the confirmed plan four times.

Counsel concedes that Debtors should not be charged for work in relation to Counsel's attempt to modify the Plan in December 2012 to January 15, 2013, and agrees to a reduction of $1,447.50 in attorneys' fees.

Lastly, Counsel defends listing tasks using the descriptor of "various," and particularly the entry for "various correspondence," by stating that his office has spent considerable time corresponding in this case. However, Counsel's explanation is that he decided to bill his correspondence time in "chunks," rather than segregating each task into separate entries, which Counsel claims would artificially inflate Counsel's time in this matter. Counsel states that he is attempting to provide a more detailed analysis of his time spent on correspondence by offering a clarified time sheet analysis.

DISCUSSION

Review of Applicable Law Relating to Chapter 13 Debtor Attorneys' Fees

As stated by the Chapter 13 Trustee, this District has long had in place the provisions of Local Bankruptcy Rule 2016-1(c). (Previously as part of a series of general orders and then put into the Local Rules.) Local Bankruptcy Rule 2016-1 governing attorneys' fees in Chapter 13 cases provides that attorneys for debtors must either elect to accept a fixed fee for such representation or seek approval of fees pursuant to 11 U.S.C. §§ 329, 330. Local Bankruptcy Rule 2016-1(a), (b), (c), and (e) further provides (emphasis added),

> "(a) Compensation. **Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c).** The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). **When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.**
>
> (b) Court Approval Required. **After the filing of the petition, a debtor's attorney shall not accept or demand** from the debtor or any other person **any payment for services or cost reimbursement without first obtaining a court order** authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.
>
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3- 096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. **The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a**

> **motion for additional fees**. Generally, **this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed**. Only in instances where **substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.** Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).
> ...
>
> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Counsel made that election and had the fees for $3,500.00 approved for representing the Debtors in this case – to the extent provided in Local Bankruptcy Rule 2016-1. This was not a mere "suggestion" or "guidelines," but the actual Rule and binds counsel. This allows debtor attorneys to avoid the costs and expenses of fee applications in Chapter 13 cases for cases that meet the business model for a maximum set fee of $4,000.00 (the fee maximum has been raised since Counsel made his election). It is incumbent on counsel to (1) determine if the case fits that business model and (2) verify that determination before the plan is confirmed and Counsel's election is locked-in through the order confirming the Plan (which was prepared by Counsel).

While the fees are set at $3,500.00, the judges in this District are not blind to the fact that events occur, economic factors change, and that unanticipated, substantial work will be required to be performed by a debtor's attorney. L.B.R. 2016-1(e)(3). If a debtor's attorney does not want to accept the set fee, then he or she has to affirmatively opt-out of the election. Here Counsel did not opt-out, and in fact, affirmatively stated in the Order confirming the plan he lodged with the court, that he accepted the $3,500.00 set fee.

Here, Counsel has ignored the simple, clear Local Bankruptcy Rules, electing to just demand more money because in total, he doesn't think that he is being fairly paid from his $3,500.00 set fee election. If Counsel was not one who regularly appears and thoughtfully represents his clients, a court might think that Counsel was trying to game the system. Take the set when it provided bonus fees in easy cases and then just use it as an up-front retainer and demand extra monies in other cases when he wasn't getting a big "easy case bonus." The court is convinced that Counsel is not trying to "game the system." However, he does not get to just ignore the Local Bankruptcy Rules.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

FEES ALLOWED

Here, Counsel does not assert that any of the fees requested are for substantial and unanticipated postconfirmation work, subject to the standard and requirements of Local Bankruptcy Rule 2016-1(c)(3). Counsel provides no detailed explanation as to why fees beyond the initial fees granted as part of the no-look fee provision in the order confirming Debtors' Chapter 13 Plan, and the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys that Counsel opted into, were not sufficient for the work performed in this case.

Counsel does not allege that he has performed work that was substantial and unanticipated in the scope of this case. Counsel provides no justification for including in his additional fees request work that was performed in the pre-confirmation period, which are covered in the no-look fees that were granted as part of the order confirming Debtors' first plan on October 5, 2010. It appears that Counsel is seeking an additional $1,092.50 for services rendered in the preconfirmation period, that should have already been covered by the $3,500 already approved by the court in the order confirming the Debtors' first confirmed plan. Dckt. No. 139. The court cannot speculate what valuation and lien avoidance work that Counsel references in the Motion were and were not contemplated within the agreement for $3,500 embedded in the Debtors' first confirmed Chapter 13 plan, and what fees were not covered under the Rights and Responsibilities filed by Debtors on July 24, 2010. Dckt. No. 7.

The lack of Counsel's clarity is further complicated by Counsel's time sheets and time-sheet analysis, listed as Exhibit 1 and Exhibit 2 on Debtors' Exhibit Cover Sheet for the exhibits filed in support of the Motion to Approve Additional Attorney Fees. Dckt. No. 139. These time sheets combine entries according to the category of task performed and dates; post and pre-confirmation services provided are not distinguished in Counsel's aggregation of his time entries.

Trustee also raises various fees and entries made for Counsel's work in his Motion to Modify and in expenses claimed in the post-confirmation period. Trustee questions whether the $1,547.50 total fees claimed for the Motion to Modify are reasonable, given Counsel's claim of receiving, for instance, $425.00 for preparation of the Motions and to appear in court. Counsel appears to concede some of the fees claimed to modify the plan ($1,447.50 in attorneys's fees), but does not address the reasonableness of the fees having been claimed in the first place pursuant to 11 U.S.C. § 330(a)(3), or why Debtors were compelled to file Motions to Modify their confirmed plan.

Trustee points out that there are tasks that should have been accomplished prior to confirmation, and that the some of the tasks listed are woefully scant on detail, and that more information is required to determine whether the work was done and how much time should be allowed for some of the more excessive billing entries. Counsel attempts to address some of Trustee's arguments in his clarified time sheet analysis, Dckt. No. 146, but the corrected entries merely elaborates on some of the more general references contained in Counsel's billing sheets. The corrections include specifically identifying the matters worked on, and separating the different tasks from one another and including them on separate entries on the time sheet.

Most critically, Counsel's Motion and supporting documentation fail to allege how the fees requested will compensate Debtors' Counsel for substantial and unanticipated post-confirmation work pursuant to the requirements set out by Local Bankruptcy Rule 2016-1(c). Counsel does not explain how the "additional" work performed pre and post confirmation were not contemplated within the drafting and execution of the Debtors' and Debtors' Attorney's Rights and Responsibilities, filed in this case on July 24, 2010. The Rights and Responsibilities, which provides that the fee charged for the case will be $3,500, requires that Debtors' Counsel must apply to the court for any additional fees. Local Bankruptcy Rule 2016-1 provides that only in instances of substantial and unanticipated post-confirmation work is necessary, should counsel attempt to request additional compensation.

Though the court would be well justified in denying this Application, little would be gained from sending Counsel back to start over. More court time would be exhausted. Counsel would spend more time in preparing a new, proper application for substantial and unanticipated fees pursuant to Local Bankruptcy Rule 2016-1(c)(3). The court, from reviewing the time records and file in this case can sufficiently determine what fees are proper as substantial and unanticipated. (To the extent that Counsel's time records are incomplete or not sufficiently descriptive, he bears the loss.)

The Chapter 13 Plan was confirmed by an order filed on October 5, 2010. Dckt. 50. A Modified Chapter 13 Plan was filed on June 13, 2011, and confirmed by an order filed on August 1, 2011. Dckts. 75, 80. This modification was required due to the Internal Revenue Service Claim being larger than projected by the Debtors. Declaration, Dckt. 74.

A third Modified Chapter 13 Plan was filed on February 5, 2013. Dckt. 115. (The proposed second Modified Chapter 13 Plan was denied confirmation.) This modification was cause because the Debtors had an automobile repair expense in excess of $1,000.00 and, more significantly, the Debtor's income was fluctuating and the co-Debtor's income had decreased. This led to defaults in the confirmed plan. Motion, Dckt. 112; Declaration, Dckt. 114. The third Modified Plan was confirmed by order filed on April 2, 2013. Dckt. 121.

The Debtors have now filed a fifth Modified Plan. Dckt. 134. The Debtors state that the modification is necessary due to changes in income, decrease in mortgage payment, increase in certain expenses, and decrease in certain expenses. Motion, Dckt. 130; Declaration, Dckt. 138. The court has granted the motion to confirm the fifth Modified Chapter 13 Plan.

From reviewing all of the pleadings filed in connection with this Motion, the motion to confirm the modified plans in this case, the loan modification, and the related motions, the court concludes that an additional $6,000.00 in legal fees and costs is proper and may be awarded.

However, such fees must be paid through this Chapter 13 case. The court is concerned that as plans were being modified, the Debtors and Counsel ignored the Debtors' actual ability to fund the Plan and pay all required Plan payments – which includes the Debtors' Counsel's Chapter 13 attorneys' fees. The court will not allow any attorney to burden a debtor with legal fees that they cannot afford to pay, using the court as a tool to allow the attorney to destroy the rehabilitated debtor post-discharge.

Though the court concludes that $6,000.00 in fees and costs for legal services provided after confirmation of the Plan in this case are for unanticipated and substantial legal services, Counsel should not believe that his current application met his minimum pleading and evidentiary burdens. Attorneys who regularly practice before any court develop their reputation. When it's an honest, ethical reputation, on occasion a court may provide for a practical solution notwithstanding an attorney's shortcomings. However, once that attorney gets that benefit, his or her "silver bullet" is exhausted and they must dot their i's and cross their t's in future matters.

Counsel has exhausted his "silver bullet."

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 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 for Compensation is granted and Scott Shumaker ("Counsel") is allowed additional attorneys' fees and costs totaling $6,000.00 pursuant to Local Bankruptcy Rule 2016-1(c)(3) for substantial and unanticipated post-confirmation legal services in this case. This is in addition to the $3,500.00 previously awarded.

IT IS FURTHER ORDERED that these additional fees and the balance of the $3,500.00 in previously approved fees, after applying the $2,000.00 retainer received by counsel, shall be paid only through the Chapter 13 Plan. No fees approved by this court, other than by the $2,000.00 retainer originally provided by the Debtors, shall be paid by the Debtors, or anyone else, to Counsel. Any fees not paid through the Chapter 13 Trustee are not enforceable by Counsel against the Debtors or any other person.

31. 10-39573-E-13 JUSTIN/LAURA GRAVES — MOTION TO MODIFY PLAN
SS-9 Scott D. Shumaker — 3-25-14 [130]

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 March 25, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. That requirement was met.

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 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, Debtor's Chapter 13 Plan filed on March 25, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. 14-21473-E-13 ISIDRO RUIZ — MOTION TO VALUE COLLATERAL OF ISIDRO F. RUIZ
PGM-1 Peter G. Macaluso — 3-27-14 [19]

Local Rule 9014-1(f)(2) Motion – 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, and Office of the United States Trustee on March 27, 2014. By the court's calculation, 43 days' notice was provided. 14 days' notice is required. That requirement was met.

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 Creditor 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 Motion is denied. No appearance is required at the April 29, 2014 hearing.

Debtor seek an order valuing the collateral securing Debtors' indebtedness to Toyota Motor Credit Corporation, to wit a 2011 Toyota Tacoma. The motion is accompanied by the Debtor's declaration. The Debtor seeks to value his 2011 Toyota Tacoma at a replacement value of $10,736.00 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 lien on the vehicle's title secures a purchase-money loan incurred in January 9, 2011, more than 910 days prior to filing of the petition, with a balance of approximately $13,276.26. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

OPPOSITION BY CREDITOR

Toyota Motor Creditor Corporation is the Creditor in this matter under a written Retail Installment Sale Contract entered between Toyota ("Creditor") and Debtor, for the financed purchase of the a 2011 Toyota Tacoma. Debtor agreed and became obligated to pay the sum of $22,198.01, with interest accruing at the contract rate of 5.94% per annum, for the financed purchase of the subject property.

Creditor contends that its secured collateral must be the $13,276.26, which was due and owing on Debtor and/or the non-filing Co-Debtor's account with Creditor at the time of the Debtor's filing of the case, as Debtor is unable to "cram down" the value of Secured Creditor's collateral.

Creditor asserts that Debtor is unable to "cram down" the value of Secured Creditor's collateral; according to Debtor's schedules, the non-filing Co-Debtor is not the spouse of the Debtor and therefore the vehicle is not community property (which the Debtor and non-filing Co-Debtor might otherwise be able to "cram down" the value of Secured Creditor's collateral. *See In re Maynard*, 264 B.R. 209, 214 (B.A.P. 9th Cir. 2001)). Creditor also argues that Debtor is not permitted to "cram down" the value of the property when there exists a third party co-owner/co-obligor. *In re Rodriguez*, 156 B.R. 659, 660 (E. D. Cal 1993).

Whether Debtor unilaterally is able to modify the loan on the vehicle, given a nonfiling co-debtor's interest in the property, is contingent on whether the Debtor's partial interest in the property, or the entire property (and no just Debtor's interest), is included in the bankruptcy estate. *In re Maynard*, 264 B.R. 209, 215 (B.A.P. 9th Cir. 2001)

The case of *In re Maynard* illustrates this point. In *Maynard*, the Ninth Circuit Bankruptcy Appellate Panel held that the trial court did not err in stripping the lien as to a non-filing co-debtor's interest in the property, because the non-filing co-debtor held a community interest in the property, the entirety of which became property of the Debtor's estate. The Debtor in the proceeding was the wife of the non-filing co-debtor on a piece of real property, which secured the repayment of a claim that the Debtor wife sought to value under 11 U.S.C. § 506(d). Debtor and her non-filing husband co-owned the property. The creditor in that action argued that the non-filing husband's interest prevented the bankruptcy court from avoiding its lien.

The court in Maynard, however, rejected the creditor's argument, incorporating an overview of 11 U.S.C. § 506(a), and how community property becomes property of the bankruptcy estate, in its discussion:

> "That value which the court is charged with determining under section 506 ... is the value of the creditor's secured claim against property of the estate." 9 Lawrence P. King, COLLIER ON BANKRUPTCY ¶ 3012.01 (15th ed. Rev.1997). Section 541(a) provides that property of the estate includes:
>
> > (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is— (
> >
> > A) under the sole, equal, or joint management and control of the debto
> >
> > (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.
>
> To the extent that the provisions of § 541(a)(2)(A) or (B) are met, the community property of both spouses becomes property of the estate when one spouse files a bankruptcy petition. *In re Miller*, 167 B.R. 202, 205 (Bankr.C.D.Cal.1994)...
>
> With very limited exceptions not applicable here, California law provides that each spouse has an equal right to manage community property. Lawrence P. King et al., Collier Family Law ¶ 4.03[3][c] (Rev.2000). As a result, the Property is included in Debtor's estate and Highland's entire lien was subject to valuation and avoidance under § 506.
>
> The only authority cited by [Creditor] Highland in support of its position is *In re Rodriguez,* 156 B.R. 659 (Bankr.E.D.Cal.1993). In *Rodriguez,* the debtor owned a 50% interest in an automobile. The other 50% was owned by a "third party co-owner/co-obligor." 156 B.R. at 660. The bankruptcy court stated that "section 506 permits valuation only of the estate's interest in the property[,]" and concluded that "a debtor holding only a fractional interest in property cannot utilize section 506 to value a secured claim." *Id.*
>
> The facts of *Rodriguez* are clearly distinguishable from those of this case. **In *Rodriguez,* only the debtor's fractional interest became property of the estate. Here, the entire Property, not just Debtor's interest, is included in the bankruptcy estate.**

[Emphasis added.] *In re Maynard*, 264 B.R. 209, 214-15 (B.A.P. 9th Cir. 2001).

The distinction is made between whether Debtor has only a fractional interest in the property, as opposed to an interest in community property (which becomes property of the estate under 11 U.S.C. § 541(a)(1) and California law (*See In re Mantle,* 153 F.3d 1082, 1085 (9th Cir. 1998)), which determines whether Debtor may modify and value the secured loan of Creditor where a third-party, non-filing co-obligor exists.

Here, Debtor has listed Kimberly Barocio as his nondebtor spouse in Schedule H of his petition. Dckt. No. 1. Debtor has not responded to the objection to state that Debtor owns the subject asset with Xochitl Ruiz, as the Buyer and Co-Debtor on the Retail Installment Sale Contract executed by Debtor and the Creditor, as community property that has become property of the bankruptcy estate. Debtor appears to hold a fractional interest in the subject 2011 Toyota Tacoma.

Pursuant to the court's holding in *In re Rodriguez*, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993), 11 U.S.C. § 506 only allows valuation of the estate's interest in the property. If the debtor has a 50% interest in the property, then the secured creditor has a secured claim as to the value of that 50% only—insofar as the debtor's interest is concerned—and an unsecured claim for the entire balance of the obligation. Id. at 660. A debtor holding only a fractional interest in property cannot utilize 11 U.S.C. § 506(a) to value a secured claim. Based on the information presented by Creditor, Debtor cannot value the entirety of the secured claim of Creditor through a valuation proceeding under 11 U.S.C. § 506.

VALUE OF ASSET

Notwithstanding the issue of whether Debtor may even value the claim of Creditor under 11 U.S.C. § 506, Creditor argues that Debtor's valuation of the subject vehicle at $10,736.00 is too low of a valuation, and does not provide adequate protection payments to its claim. Creditor argues that should it be forced to accept the valuation, Creditor's security interest will be diminished on its collateral. Creditor offers a print out of a Kelley Blue Book Auto Market Report, showing that the retail, replacement value of the vehicle is $13,195.00. Exhibit C, Dckt. No. 31.

The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Mary Ibarra, Dckt. No. 30, to be that she obtained the *Kelley Blue Book* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

REPLY OF DEBTOR

Debtor responds by stating that he "agrees with the Creditor," in that the full contract balance shall be paid in full due to a co-signer being on the loan. The balance at the time of filing was $13,276.26. Debtor will increase the plan payment by $50.00 the contract balance. Dckt. No. 33.

At the confirmation hearing on April 22, 2014, the parties so amended the proposed plan and have provided for this claim as stated above.

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 to Value is denied.

33. 11-32476-E-13 PLEXICO MICHAUX — MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso — 3-25-14 [59]

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, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. That requirement was met.

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 Debtor has 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 March 25, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. 13-34181-E-13 SJS-2 ROBERT/KRISTEN THOMAS Scott J. Sagaria MOTION TO CONFIRM PLAN 3-18-14 [44]

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 March 18, 2014. By the court's calculation, 43 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, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. Debtor's Amended Plan lists in Class 2A a debt to Bank of America for $2,755.40, Class 2C for a debt to Bank of America for $105,594.22 and Class 4 lists Debtors' mortgage to Bank of America as a direct pay in the amount of $1,993.09.

   Bank of America filed a Proof of Claim, Court Claim No. 10, indicating mortgage arrears of $2,873.59, including 10 late charges over the course of three years totaling $808.90 (not all

consecutive), one payment of $1,025.74, and an escrow shortage of $64.54. The late charge appears set at 5% of the late payment due. Debtors joint declaration, Dckt. No 52, indicates on page 3 that the plan has been amended to provide for the arrears on the first mortgage in Class 2A. There are no additional provisions appended to the plan.

2. Trustee objects because there are no additional provisions clarifying the treatment of Bank of America and there is insufficient description of the Creditor's collateral. Trustee is required under the plan to both pay (Class 2A), not pay (Class 2C) and have the Debtors pay (Class 4), the claim of Bank of America.

   a. 2nd Deed of Trust: While the Trustee believes that Debtors intent to value the second deed of trust held by Bank of America, and has on January 16, 2014 (Dckt. No. 31), and probably scheduled the claim as Class 2C, this plan was filed after that date, and the description of the collateral is insufficient with no account number or indication that the collateral is a second deed of trust.

   b. Arrears Treatment: Of more concern is the Debtors providing that Debtors will make the payment directly, and that the Trustee will make the payment as Class 2A. This could be easily clarified with the Additional Provisions, but Debtors did not choose to provide any. The court is left with Claim No. 10-1, which provides that Debtors defaulted in the mortgage immediately, and that Debtors have been late with 10 such payments over the last three years.

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.

35. 13-34181-E-13 ROBERT/KRISTEN THOMAS
TSB-1 Scott J. Sagaria

CONTINUED MOTION TO DISMISS CASE
2-19-14 [39]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy 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.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

36. 14-20181-E-13 DANTE THOMAS
MHL-1 Michael H. Luu

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
4-2-14 [25]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. 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 grant the Motion pursuant to 11 U.S.C. § 506(a), and determine creditor's secured claim to be $0.00. 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 and order to avoid Bank of America, N.A.'s second deed of trust attached to his residential real property. According to Debtor, the residential property has a value of $250,000.00 and is encumbered by a first deed of trust with a balance of $270,060.00. Because the second deed of trust is completely under-collateralized, Debtor argues, it should be voided under 11 U.S.C. § 506(d).

DISCUSSION

A request to determine the extent, validity, or priority of a security interest, or a request to avoid a lien, requires adversary proceeding. Fed. R. Bankr. P. 7001(2). The court cannot determine the extent, validity, or priority of the creditor's security interest through a motion. Movant incorrectly cites to *In re Laskin*, 222 B.R. 872 (B.A.P. 9th Cir. 1998), for the proposition that an adversary proceeding is not required to determine a lien is void or is avoided. Rather, that 11 U.S.C. § 506 is used only to value the secured claim. *Id.* at 876 ("In contrast to Chapter 13 debtors, who may use § 506 to determine the amount to be paid to a creditor as a secured claim in return for at least a chance of being paid as an unsecured creditor, Laskin seeks to use § 506(d) to expand the rights

afforded Chapter 7 debtors by removing an encumbrance from his real property, which he intends to retain.")

Further, an 11 U.S.C. § 506(a) motion is not a basis for avoiding a lien. *Dewsnup v. Timm*, 502 U.S. 410, 416 (1992). Rather, a debtor may properly have a secured claim valued pursuant to 11 U.S.C. § 506(a), then perform a Chapter 11, 12, or 13 plan which provides for that secured claim in the amount determined pursuant to § 506(a), and upon completion of the plan obtain a reconveyance of the lien. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

Here, Debtor fails to file a Motion to Value the secured claim of Bank of America, N.A. Rather, the Motion states with particularity the following grounds upon which the relief is requested (Fed. R. Bankr. P. 9013).

A. Bank of America, N.A. asserts a claim in the amount of $130,000.00 secured by the Debtor's residence.

B. The Bank of America, N.A. deed of trust is junior in priority to the claim of Green Tree Servicing, LLC in the amount of $270,060.00, which is secured by a deed of trust.

C. The Debtor's opinion of value for the residence is $250,000.00.

D. Debtor prays that the "lien" of Bank of America, N.A. is unsecured.

E. Debtor prays that the "lien" of Bank of America, N.A. be declared null and void.

Motion, Dckt. 25.

IMPROPER PREPARATION OF PLEADINGS

The Debtor has failed to comply with the basic requirements for preparation and filing of pleadings in this District. Local Bankruptcy Rule 9004 and the Revised Guidelines for Preparation of Documents. Debtor filed the motion and memorandum of point and authorities 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). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

While the Debtor may contend that this is a "simple" motion/points and authorities, so the rule should not apply to his counsel. If it is that

"simple," then it would be easy for counsel to comply with the Rules. This court previously was presented with 30-40 page "Mothorities" which combined in confusing pleadings the grounds and mere "arguments" which other counsel did not belief were subject to Federal Rule of Bankruptcy Procedure 9011. In some cases, the court concluded that the "Mothorities" was prepared to confuse the other party and counsel, as well as the court, and create the illusion that grounds could exist.

MERITS OF RELIEF REQUESTED

As addressed above, 11 U.S.C. § 506(a) does not provide a basis for declaring a lien "null and void." It allows the court to value the secured claim for purposes of the bankruptcy plan and what a debtor will have to pay that creditor for the secured claim through the plan. Such relief is denied without prejudice.

However, pursuant to 11 U.S.C. § 506(a), the court considers the value of the Bank of America, N.A.'s second deed of trust, secured by Debtor's real property. The court will consider the factual grounds stated by Debtor in his Motion as a basis for relief under 11 U.S.C. § 506(a).

The Debtor is the owner of the subject real property commonly known as 3280 Lagunita Circle, Fairfield, California. The Debtor seeks to value the property at a fair market value of $250,000.00 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 $270,060. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately 130,528.63. Therefore, the Bank of America, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. Bank of America, N.A.'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.

For this Motion only, the court waives the failure to comply with the Local Bankruptcy Rule and separate the points and authorities from the motion. The court does not recognize counsel as having previously violated the Local Rule. There are other, more substantive issues, with the present motion and the other relief requested. The court will allow counsel to address those issues, rather than filing a supplemental pleading in this contested matter to correctly state what should be in the motion (as the court would normally do with "first time offenders). The court also notes that there is pending a motion to dismiss for the Debtor's failure to propose a amended plan following denial of confirmation in January 2014. Counsel and the Debtor also need to focus on a plan 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 Motion for Valuation of Collateral 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A., secured by a second deed of trust recorded against the real property commonly known as 3280 Lagunita Circle, Fairfield, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $250,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

IT IS FURTHER ORDERED that all other relief requested in the Motion is denied without prejudice.

37. 11-47484-E-13 CHRISTOPHER MALOLOT
WSS-2 W. Steven Shumway
MOTION TO SELL
3-20-14 [58]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 19, 2014. By the court's calculation, 41 days' notice was provided.

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 Permit Debtor to Sell Property without prejudice. 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 10165 Frank Greg Way, Elk Grove, California. The sales price is $280,000.00 and the named buyer is MNB Development Inc. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 61.

Trustee's Limited Opposition

The Chapter 13 Trustee states that he has no opposition to the sale but that OneWest Bank, FSB's claim against the subject real property has been transferred to Deutsche Bank National Trust Company, as Trustee of Indymac Home Equity Mortgage. The Chapter 13 Trustee asks that the court address in the order if the Trustee is to pay this claim through the sale.

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

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

The 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 Malolot, 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 the Christopher Malolot, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to MNB Development Inc. or nominee ("Buyer"), the Property commonly known as 10165 Frank Greg Way, Elk Grove, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $280,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 61, 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 no more than 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, unless otherwise stated in this order. 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. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

6. The Chapter 13 Debtor is authorized to receive the $3,000.00 HAFA Incentive Program monies, but no other fees, compensation, or other monies in connection with this sale. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

7. The court having approved the sale, the Chapter 13 Trustee shall not make any further disbursements on any claims secured by the property sold, without further order of the court.

38. 14-20187-E-13 JOANNA FRITTER — **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
TSB-1 Gary H. Gale — **2-26-14 [36]**

Final Ruling: The case having previously been dismissed, the Motion is denied 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 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot, the case having already been dismissed.

39. 12-30588-E-13 DIANE/OSVALDO MALDONADO — **MOTION TO MODIFY PLAN**
ET-4 Matthew R. Eason — **3-18-14 [72]**

Final Ruling: The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Modify Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Motion to Modify Plan.**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Modify Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

40. 13-30488-E-13 KIM BUONOCORE
ASW-1 Ashley R. Amerio

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
3-28-14 [32]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required. That requirement was met.

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). The defaults of the respondent and other parties in interest are entered.

The Motion to Approve the Loan Modification is denied without prejudice. 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:

EverBank ("Movant"), seeks an order authorizing Debtor and Movant to enter into and finalize a loan modification with respect to the first deed of trust on the real property located at 5855 Annrud Way, Sacramento, California. The Loan Modification Agreement provides for recapitalization of past due arrears, a lower interest rate and monthly payment amount, and

an extension of the loan's "Maturity Date." A copy of the Loan Modification Agreement is attached as Exhibit "1" to the list of Exhibits in Support of the Motion, Dckt. No. 34.

Everbank has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $1,648.76 to $1,327.31. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 6.000% to 4.625%. The maturity date of the note will be March 1, 2054, with a term of note of 480 months.

In this instance, however, the attorney for Debtor has not signed off on the motion or filed a separate concurrence. It is unclear whether Creditor has, for example, entered into prohibited communications with the represented Debtor in violation of the Rules of Professional Conduct in filing this Motion, which seeks court approval of the purported loan modification agreement on behalf of the Debtor. Debtor's counsel has been excluded from this Motion. It appears that Everbank and its counsel have taken on the legal and fiduciary role of filing motions for the Debtor.

While some courts have taken the position that creditors do not have standing to bring a motion for a debtor to obtain approval of a loan modification, this court's view has not been so narrow. Just as in approving a compromise with a trustee or debtor in possession where a creditor prepares the motion to approve the stipulation, the creditor may take the laboring oar in a motion to approve a loan modification.

However, in neither case may the attorney for the other party be non-existent in the motion. Counsel must either bring the motion jointly with the creditor, countersign the motion evidencing these Debtors, attorneys' concurrence and Debtor's support, a declaration for the Debtor prepared by Debtor's counsel, or file a separate statement of support for the motion. Only then does the court know that the Debtor, who is represented by counsel, have with the knowledge and support of such fiduciary, entered into this agreement. Otherwise it appears that counsel representation has been circumvented or that counsel has failed to fulfill his or her duties to the Debtor.

The court's decision is to deny the Motion without prejudice. The absence of Debtors' counsel leave the court in the quandary as to whether the Debtors have been properly represented. The court will not blindly sign orders when the attorney for one of the parties has not appeared for their clients on the matter.
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 EverBank 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 Approve the Loan Modification is denied without prejudice.

41. 14-21391-E-13 TSB-1 | **TERRY CONANT** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 4-2-14 [37]**

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 April 2, 2014. By the court's calculation, 27 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:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments under the plan or comply with the plan. The Trustee also alleges that Debtor's plan is not filed in good faith. Debtor lists Wells Fargo Home Mortgage's claim for home mortgage on Schedule E. This claim should be listed on Schedule D because Wells Fargo Home Mortgage's claim is secured by Debtor's residence. Moreover, Debtor fails to propose a monthly dividend to pay mortgage arrears of $96,756.00 in Class 1 and the interest rate on arrears has been left blank.

Wells Fargo Home Mortgage holds a deed of trust secured by the Debtor's residence. 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 arrearages, the plan cannot be confirmed.

Moreover, the Trustee claims that Debtor fails to provide a treatment for unsecured claims. The plan has left the dividend blank instead of stating 0%. Failure to provide a treatment may result in a failure to discharge unsecured debts under 11 U.S.C. § 1328(a).

Moreover, the Trustee alleges that Debtor's plan may fail the Chapter 7 liquidation analysis. Debtor's non-exempt equity totals $12,380.00 and Debtor fails to propose a dividend to unsecured creditors. Debtor also fails to list the value of the subject real property on Schedule A. Trustee is unable to determine whether there is any non-exempt equity in the property.

The Trustee also claims that Debtor is $1,500.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not 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). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(i).

Lastly, Debtor has failed to provide the Trustee business documents including: Questionnaire, tax returns, profit and loss statement, bank account statements, proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. Proc. 4002(b)(3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I).

This is not the Debtors first recent bankruptcy cases. He has filed, and had dismissed (or been denied a discharge due to having received a discharge in a prior Chapter 7 case) the following cases:

A. 12-25594

1. Filed.....March 22, 2012
2. Dismissed.....April 9, 2012

B. 12-29733

1. Filed.....May 21, 2012
2. Discharge Denied (§ 727(a)(8))...September 26, 2012

C. 12-36770

1. Filed.....September 17, 2012
2. Dismissed.....January 9, 2013

D. 13-24962

1. Filed.....April 11, 2013

2. Dismissed.....July 3, 2013

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.

42. 11-36992-E-13 DANNIE/JARIS BLANTON — MOTION TO MODIFY PLAN
CAH-6 C. Anthony Hughes — 3-21-14 [124]

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 March 21, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. That requirement was met.

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 March 21, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

43. 11-36992-E-13 DANNIE/JARIS BLANTON
CAH-7 C. Anthony Hughes

MOTION FOR SUBSTITUTION OF DECEASED PARTY
4-2-14 [131]

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 Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Substitution of Deceased Party 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 for Substitution of Deceased Party. 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:

Joint Debtor, Jaris Kimberlie Blanton, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Dannie Brown Blanton. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtors filed for relief under Chapter 13 on July 11, 2011. On April 30, 2013, the debtor's First Modified Chapter 13 Plan was confirmed. On April 28, 2013 the debtor passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on March 24, 2014. Dckt. No 130. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner. A Modified Plan was filed on March 21, 2014 and Amended

Schedules were filed with the Court and attached as Exhibit B and C. Dckt. No. 127.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party**. There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case

> context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Ms. Blanton has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. No 130. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Jaris Kimberlie Blanton, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Dannie Brown Blanton. The court grants the Motion to Substitute Party.

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 Substitute After Death 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 Jaris Kimberlie Blanton is substituted as the successor-in-interest to Dannie Brown Blanton and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

44.	**13-27996-E-13 RHM-5**	**FREDERICK/JACQUELYN TURNER Robert Hale McConnell**	**OBJECTION TO CLAIM OF CONTRA COSTA COUNTY TREASURER-TAX COLLECTOR, CLAIM NUMBER 4 3-27-14 [90]**

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, respondent creditor, and Office of the United States Trustee on March 27, 2014. By the court's calculation, 33 days' notice was provided. 44 days' notice is required. That requirement was not met.

Tentative Ruling: This Objection to a Proof of Claim was not properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1. Local Bankruptcy Rule 3007-1(b) requires that the objecting party filing an Objection to Proofs of Claim must file and serve the objection at least forty-four (44) days prior to the hearing date, unless the objecting party elects to give the notice permitted by Local Bankruptcy Rule 3007-1(b)(2).

The objecting party has not indicated that the Objection was set for hearing on 30 days' notice, pursuant to the alternative noticing procedure set out by Local Bankruptcy Rule 3007-1(b)(2). The Notice of Hearing simply advises potential respondents to file written responses 14 days before the hearing. Dckt. No. 91.

The court's tentative decision is to overrule the Objection to Proof of Claim without prejudice. 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:

DEFECTIVE SERVICE

A review of the Certificate of Service, Dckt. No. 94, shows that the respondent creditor, the Contra Costa County Treasure-Tax Collector, was served at a post office box. Dckt. No. 94. Service upon a post office box is plainly 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.").

REVIEW OF THE OBJECTION

Debtor objects to the proof of claim on the basis that Creditor, , the Contra Costa County Treasure-Tax Collector, on Proof of Claim No. 4 does not provide an itemized statement of the interest, fees, expenses, or charges with its proof of claim under Federal Rule of Bankruptcy Procedure 3001(c)(2)(A). Debtor states that the claim appears to be for a supplemental tax for the fiscal year of 2004-2005. Only a reference to an "add" amount for delinquent penalty in December 2006, delinquent cost, and an additional penalty is set forth. Debtor contends that these figures should be stricken under Federal Rule of Bankruptcy Procedure 3001(c)(2)(A). Debtor argues that the same objection applies to page 4 of the creditor's claim.

Additionally, Federal Rule of Bankruptcy Procedure 3001(c)(2)(B) provides that if a security interest is claimed in Debtor's property, a statement of the amount necessary to cure the default as of the date of the petition shall be filed with the proof of claim, and that the Claim does not comply with that requirement.

Debtor further objects that there is no "file stamp" from a county recorder or any other government agency to show that the claim is a secured claim secured by a statutory lien under California state law, or that the claim has been perfected. Debtor argues that nowhere within the California Revenue and Taxation Code Section 4103, which is referenced by Creditor, is it provided that the tax is a secured claim. Debtor then makes an argument under California Code of Civil Procedure Section 337, stating that the statute's four year limitation on action upon any written contract bars collection on the claim.

Debtor's Objection reads like a narrative of different possible rules, statutes, and arguments that are not cohesively tied together, formatted in a confusing manner. Debtor includes the title "Memorandum of Points and Authorities in Support of the Objection" at the end of the Objection, on page 12, Dckt. No. 90, but it appears that those pages are missing. Debtor does not clearly state the relief requested at the beginning of the Objection.

Further, Debtor's counsel did not sign the document, thereby violating Federal Rule of Bankruptcy Procedure 9011, which requires that every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, be signed by at least one attorney of record in the attorney's individual name. Debtor's Attorney did not sign the instant Objection. Based on this defect, and Debtor's failure to set proper notice of the hearing, the Objection 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 Costa County Treasure-Tax Collector filed in this case 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 objection to Proof of Claim number 4 of Costa County Treasure-Tax Collector is overruled.