UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 22, 2014 at 3:00 p.m.

NOTICE - CALLING OF L.B.R. 9014-1(f)(2) NOTICED MATTERS

The court will call at the start of the calendar the following Matters: Items # 3, 5, 16, 62, 65 and 84.

These appear to be matters noticed pursuant to L.B.R. 9014-1(f)(2) which do not *appear to the court* to be contested. If the matter is called and an opposition is to be asserted, advise the court only that an opposition is asserted. The court will then call that matter in the order that it is set out on the calendar.

If your L.B.R. 9014-1(f)(2) matter is not listed above, *do not request that the court call it* out of order.

As previously permitted, Parties or Counsel with specific calendar or personal matter conflicts may notify the Courtroom Deputy Clerk and request that the matter be specially called.

1.	**14-23800-E-13** **DPC-1**	**TROY/KIMBERLY JEPSEN** **Mark W. Briden**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-19-14 [36]**

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further

hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on June 19, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value claim of MTH Mortgage LLC. However, the court having granted the motion, this ground is overruled.

Trustee also notes that the Debtor's sixth page of the plan is titled "Jepsen" and contains additional language without the property identification required.

The Trustee also objects that the plan is not the Debtor's best effort as Debtor is over the median income and is proposing plan payments of $150.00 for 60 months with a 1% dividend to unsecured creditors, which totals $872.38. Trustee states that Debtor's Schedule I and J are not accurate:

a. Schedule I lists Troy's gross income as $6,474.00 and Kimberly's gross income as $2,229.00, however the pay advices provided to the Trustee reflect $7,004.62 gross per month for Troy and $2,449.93 gross per month for Kimberly

b. The debtors Plan indicates the Dodge is being paid by the debtors daughter in the amount of $177.00 per month. Neither Schedule I or J list the contribution and/or expense paid to the debtors for the payment being made to Sierra Central Credit Union for the Dodge.

c. The debtors admitted at the First Meeting of Creditors held June 12, 2014 that both the 26 year old son and their 19 year old daughter live with them, and the daughter has income although they are scheduled as dependents and no income is listed for them on Schedule I. The income listed for the debtors differs where it is not clear if the net income listed on Schedule J is accurate, in the amount of $150.00 per month. Any income for the adult children, or support for the grandchild should be scheduled.

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.

2. 14-23800-E-13 MWB-2 | **TROY/KIMBERLY JEPSEN** | **Mark W. Briden** | **MOTION TO VALUE COLLATERAL OF MTH MORTGAGE, LLC** | **6-5-14 [29]**

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 5, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of MTH Mortgage LLC, "Creditor," is granted.

The Motion to Value filed by Troy and Kimberly Jepsen, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's

declaration. Debtor is the owner of the subject real property commonly known as 4078 Alta Campo Drive, Redding, California, "Property." Debtor seeks to value the Property at a fair market value of $350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $395,181.00. Creditor's second deed of trust secures a claim with a balance of approximately $38,361.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Troy and Kimberly Jepsen, "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 MTH Mortgage, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 4078 Alta Campo Drive, Redding, 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 $350,000.00 and is encumbered by senior liens securing claims in the amount of $395,181.00, which exceed the value of the Property which is subject to Creditor's lien.

3. 14-24402-E-13 SHAD/KARALEE HUNTLEY
DPC-1 Mark A. Wolff

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-5-14 [20]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 5, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4).

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value, which is set to be heard on July 22, 2014. The court continued the Objection to be heard in conjunction with the Motion to Value.

The court having granted the Motion to Value, the court overrules the Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled, Debtor's Chapter 13 Plan filed on April 29, 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.

4. 14-24402-E-13 SHAD/KARALEE HUNTLEY — MOTION TO VALUE COLLATERAL OF SCME MORTGAGE BANKERS, INC.
WW-1 Mark A. Wolff — 6-5-14 [24]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The Motion to Value filed by Shad and Karalee Huntley, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4013 Mendocino Court, El Dorado Hills, California, "Property." Debtor seeks to value the Property at a fair market value of $250,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $347,600.00. Creditor's second deed of trust secures a claim with a balance of approximately $65,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Shad and Karalee Huntley, "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 Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4013 Mendocino Court, El Dorado Hills, 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 in the amount of $347,600.00, which exceed the value of the Property which is subject to Creditor's lien.

5. 14-24505-E-13 CHRISTINE DOUGLAS
DPC-1 Frederick H. Schill

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-18-14 [23]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4).

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on pending Motions to Value, which are set to be heard on July 22, 2014.

The court having granted the Motions to Value, the court overrules the Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled, Debtor's Chapter 13 Plan filed on April 30, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 14-24505-E-13 CHRISTINE DOUGLAS
FHS-2 Frederick H. Schill

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
6-24-14 [27]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion to Value filed by Christine Douglas and Frederick Schill, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5948 Selby Lane, Paradise, California, "Property." Debtor seeks to value the Property at a fair market value of $155,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $173,185.76. Creditor's second deed of trust secures a claim with a balance of approximately $66,597.83. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and

11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Christine Douglas and Frederick Schill, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5948 Selby Lane, Paradise, 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 $155,000.00 and is encumbered by senior liens securing claims in the amount of $173,185.76, which exceed the value of the Property which is subject to Creditor's lien.

7. 14-24505-E-13 FHS-3 — CHRISTINE DOUGLAS, Frederick H. Schill — MOTION TO VALUE COLLATERAL OF ROBERT D. & MARY JANE JEFFORDS 6-24-14 [33]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

ruling from the parties' pleadings.

The Motion to Value secured claim of Robert and Mary Jane Jeffords, "Creditor," is granted.

The Motion to Value filed by Christine Douglas and Frederick Schill, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5948 Selby Lane, Paradise, California, "Property." Debtor seeks to value the Property at a fair market value of $155,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $173,185.76. Bank of America, N.A.'s second deed of trust secures a claim with a balance of approximately $66,597.83. Creditor's third deed of trust secures a claim with a balance of approximately $7,641.67. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Christine Douglas and Frederick Schill, "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 Robert and Mary Jane Jeffords secured by a third in priority deed of trust recorded against the real property commonly known as 5948 Selby Lane, Paradise, 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 $155,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property which is subject to Creditor's lien.

8. 12-37606-E-13 SCOTT WILLIAMS — MOTION TO MODIFY PLAN
SCG-1 Sally C. Gonzales — 5-27-14 [28]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2014. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 May 14, 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.

9. 09-41809-E-13 PACIFICO/DOROTHY CRUZ — MOTION TO MODIFY PLAN
SAC-1 — Scott A. CoBen — 5-19-14 [40]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 64 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 May 19, 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.

10. 11-21112-E-13 GINNIE JOHNSON — MOTION TO MODIFY PLAN
CFH-3 Curt F. Hennecke — 5-22-14 [51]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 61 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is $235.00 delinquent in plan payments, which represents one month of

the $210.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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

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

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

11. 14-25114-E-13 JSO-1 — TIMOTHY/AMBER BOLLMANN — Jeffrey S. Ogilvie — MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. — 6-2-14 [19]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of JPMorgan Chase Bank, N.A., "Creditor," is granted.

The Motion to Value filed by Timothy R. And Amber L. Bollman, "Debtor" to value the secured claim of Creditor is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1192 Coggins St., Redding, California, "Property." Debtor seeks to value the Property at a fair market value of $315,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $324,089.00. Creditor's second deed of trust secures a claim with a balance of approximately $101,182.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Timothy R. And Amber L. Bollman, "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 JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 1192 Coggins St., Redding, 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 $315,000.00 and is encumbered by senior liens securing claims in the amount of $324,089.00, which exceed the value of the Property which is subject to Creditor's lien.

12. 14-26217-E-13 JEFFERY/MANDY PATTERSON — MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
CA-1 Michael David Croddy — 6-27-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of U.S. Bank, N.A., "Creditor," is granted.

The Motion to Value filed by Jeffery and Mandy Patterson, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4786 Kerwood Way, Sacramento, California, "Property." Debtor seeks to value the Property at a fair market value of $113,560.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a

balance of approximately $142,088.00. Creditor's second deed of trust secures a claim with a balance of approximately $13,943.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Jeffery and Mandy Patterson, "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 U.S. Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4786 Kerwood Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $113,560.00 and is encumbered by senior liens securing claims in the amount of $142,088.00, which exceed the value of the Property which is subject to Creditor's lien.

13. 13-30919-E-13 PGM-5 — BUN AUYEUNG AND SOO TSE — Peter G. Macaluso — CONTINUED MOTION TO CONFIRM PLAN — 5-19-14 [144]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

Trustee states that on April 11, 2012, the Court entered a judgment against Barton and Paula Christiansen for $13,709.95 for violation of stay and to Barton and Paula to pay an additional $1,550 each to Soo Han Tse for emotional distress damages. See Judgment, Case No. 10-02497, Dckt. 72. Trustee states the Statement of Financial Affairs, filed on August 19, 2013, does not disclose this as income in either 2012 or 2013; Schedule B does not disclose this as an account receivable. While Trustee has been advised that Barton and Paula Christiansen paid the judgment amount in late April or early May, 2012, the Trustee is not certain when the Debtors received the funds, and what happened to these funds. If these funds were received and spent on ordinary expenses, the Debtors appear unlikely to be able to pay $100 per month, 11 U.S.C. §1325(a)(6). If these funds are still held by the Debtors, the plan appears to fail the liquidation analysis of 11 U.S.C. § 1325(a)(4). If these funds were given to a third party, it is not clear how many such gift were actually made as none are disclosed on Question 7 of the Statement of Financial Affairs.

Furthermore, Trustee states Debtors' plan call for payments of $100 per month for 36 months with an additional lump sum payment of $13,000 provided to the Trustee a "gift" from daughter; the Trustee received a payment posted 1/9/2014 of $13, 000 from the Law Offices of Peter Macaluso, so the Trustee is not certain as to the source of the payment. If this payment is really from the judgment income not disclosed, the proceeds would not be from the daughter unless the Debtor gifted her with the proceeds. If the payment is from the daughter from her income or separate property, the Debtor had not presented a declaration from the daughter to establish that with the present motion until the Declaration filed June 16, 2014.

Trustee states the Declaration filed by the daughter on June 16, 2014. However, the Debtor did not reflect the daughter's assistance on the original Form 22C or Statement of Financial Affairs. In this case the original Schedule I reflects $915.40 "SSa", and $550.00 "Assistance From Daughter." In Debtor's prior case (no. 09-35065), the original Schedule I

reflected $2,200.00 of pension or retirement income, $1,400.00 of Chicken Sales, and no contribution from the daughter. The Debtors' original Schedule I & J in the Chapter 7, (Case No. 05-37016, Dckt. 6) did not reflect rent or assistance, and showed $1,500.00 income from odd jobs as a handyperson, labor, gardening. No vehicle appears on Debtor's original Schedule B. The Trustee has received one $100.00 payment posted on 1/23/2014 which was purchased by "Manlin Aueung", so the Trustee does not know if the daughter's declaration is true as this name appears to be the same surname as the Debtors and the Daughter's, but appears to be a money order purchased locally by an unidentified party related to the debtor.

The Trustee also states the plan payments total $16,600.00 and that Debtors' obligations in the plan exceed the payments. Debtors' plan relies on the Debtors valuing the claim of Christiansen's listed at $140,000, of which the Debtors propose to pay only $7,000. The Court continued Debtors' Motion to Reconsider Motion to Avoid Lien. If the motion to avoid lien is denied, Debtors' plan does not have sufficient proceeds to pay claims within 36 months.

The Trustee is uncertain if Debtors plan has been proposed in good faith, 11 U.S.C. 1325(a)(3). Trustee states the sincerity of the Debtors in seeking Chapter 13 relief is in question along with the accuracy of the plans statements of debts. They appear to have filed this case to take advantage of an increased allowable homestead exemption in order to reduce further the Christensen lien on the property. The court, in Debtors' prior case no. 09-35065, pointed out many instances of bad faith. Trustee argues that it would appear that Debtors are attempting to circumvent events that transpired in the prior case. The amount of the proposed plan payments and the amount of the Debtors surplus are also in question. In the prior case, upon conversion to Chapter 7, Debtors income on the Form B22A, filed on February 28, 2013, was listed at $2,200.00 per month in pension and retirement without any contributions from family. In the instant case, the total income is listed at $1,466.40, of that amount; $550.00 is from family assistance. Between the conversion to chapter 7 in the prior case and the filing of Form B22A on February 28, 2013, and the filing of this case on August 19, 2013, it would appear Debtor has lost his farming and pension and retirement income all together which is not explained in the present motion, although the Trustee is not certain if it was explained previously.

CREDITOR'S OPPOSITION

Creditors Barton and Paula Christensen ("Creditor") object to the motion to confirm on the grounds that the plan is not confirmable. Creditor argues that there is no order avoiding the lien or valuing the real property, in which the plan provides. Creditor also argues that the plan has not been proposed in good faith as evidenced by the fact that one debt included in the plan resulted from a court judgment against Debtors and that Debtors are attempting to avoid the lien when Debtors have already obtained an order avoiding the lien. Creditor argues that Debtors have failed to accurately state their income, debts, expenses; have made fraudulent representations to mislead the court; and have unfairly manipulated the Bankruptcy Code. Creditors also argue that Debtors do not qualify as Chapter 13 debtors, as they do not have regular income with which to fund a Chapter 13 plan, having others instead fund the plan for the sole purpose of

stripping the judgment lien of the Creditors.

DEBTORS' REPLIES

Debtors responded to the Trustee's opposition by amended the Statement of Financial Affairs to reflect the adversary proceeding. Debtors also filed the Declaration of the Debtors' daughter Florence (also known as Manlin) to show that the adversary proceeding award was used substantially for the repayment of past post-petition property taxes on the property at issue with the "lump sum" coming from the daughter by way of family and friends in Hong Kong. Debtors also state that they agree to increase the proposed plan to 60 months (from 36 months) to show that they propose the plan in good faith.

Debtors also filed a reply to Creditor's opposition, seeking an evidentiary hearing on the issues of (1) eligibility, (2) the motion to avoid the lien, and (3) confirmation. Debtors provide a statement of undisputed facts and requests further briefings. Debtors argue that they do qualify as Chapter 13 debtors as they have steady and stable income.

DISCUSSION

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13

relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

The Ninth Circuit Court of Appeals in *Leavitt v. Sots (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) stated that the court considers the totality of the circumstances when determining "bad faith." The Leavitt court also considered totality of the circumstances factors discussed in *Eisen v. Curry*, 14 F.3d 469, 470 (9th Cir. 1993), (discussing the factors in the context of a Chapter 13 case) including, unfair manipulation of the Bankruptcy Code, misrepresentation of facts, history of filings and dismissals, only intention to defeat state court litigation, and whether egregious behavior is present.

Prior Rulings and Bankruptcy Case

Debtors' prior bankruptcy case was filed as a Chapter 13 case on July 21, 2009. Bankr. E.D. Cal. No. 09-35065. The case was converted to one under Chapter 7 by order filed on February 25, 2013. 09-35065 Dckt. 216. In deciding to convert the case to one under Chapter 7, the court found that the Debtors were not prosecuting the Chapter 13 case in good faith, including affirmatively making misrepresentations to the court.

> "Rather than proceeding in good faith to timely comply with the confirmed bankruptcy plan, the Debtors have demonstrated that they are merely engaging in a gamble on the current real estate market. The Debtors are gambling with the creditors' money that the market will rise, allowing the Debtors to pocket more money from a sale. If the market goes down, then creditors can bear the risk (suffer the loss).
>
> The Debtors have obtained two and one-half years of bankruptcy court protection, with all to show is that they will, sometime in the future, do what they have promised to do in the past if they determine that the real estate market has risen high enough for them to make more money by improperly delaying creditors.
>
> The Debtors are not appearing, testifying, and making representations to this court in good faith. Rather, they have acted to mislead the court, creditors, the Chapter 13 Trustee, and other parties in interest.
>
> No evidence is filed in opposition to the Motion to Dismiss, but merely short arguments of counsel. Such argument is not evidence of the facts alleged therein. The absence of such evidence causes the court to infer that such information is wholly unsupported. Even when afforded the opportunity to file supplemental pleadings, the Debtors

merely had their attorney file a Supplemental Reply arguing why the case should not be dismissed. The Debtors have been careful not to make any statements under penalty of perjury to the court.

At the January 9, 2013 hearing the Debtors asked the court to continue the hearing to allow Debtors to sell the property. Such would allow them to profit from their misrepresentations to the court. Debtors' supplemental opposition states that Debtors have obtained a real estate agent and that the sale price is listed as $200,000 instead of the $250,000 initially stated by Debtors. Counsel for the Debtors argues that a modified plan will provide for all increases in value to go to creditors, with the Debtors reducing their exemption. However, the court's review of the docket indicates that a modified plan has not been filed.

In confirming the current Chapter 13 Plan, the Debtors testified under penalty of perjury that they would sell their real property to pay all lien holders and Class 2 claims in full. Declaration, ¶¶ 6, 7, Dckt. 168. In fighting to confirm the plan against opposition on the Debtors' continuing delay, the Debtors represented to the court that they had entered into a one-year listing agreement, September 26, 2011 through September 26, 2012, and were listing the property for sale for $290,000.00. Reply, Dckt. 177. Further, "The debtor's [sic.] intend to reduce the asking price accordingly over the 12 month period so that the sale occurs on or before September of 2012..." *Id.*

The court harmonized the requirements for equal monthly payments specified in 11 U.S.C. § 1325(a)(5)(B)(iii)(1) with the rehabilitation aspect of Chapter 13 and the ability of a debtor to provide for the prompt orderly liquidation of assets through a plan to provide for creditors and protect exempt interests in assets. Civil Minutes for October 14, 2011 Confirmation Hearing, Dckt. 180. The court expressed clear concern over the Debtors' continuing failure to address the issues raised in the prior confirmation hearing (confirmation denied) and unreasonable delay in the prosecution of a plan and liquidation thereunder.

Though the court's November 14, 2011 confirmation order expressly requires that the Debtors' shall immediately list the property for sale at $290,000.00 and shall have the property liquidated (sold) by September 2012, the Debtors did not actively attempt to sell the property. Rather, they impeded the sale of the property, seeking to gamble that the real estate market would increase and they could pocket more the sales proceeds.

The Debtors, in responding to this Motion, have been

very careful not to provide any explanation under penalty of perjury as to the efforts they made to market and sell the property. From this lack of testimony the court infers that such testimony would be adverse to the Debtors – showing that they did not attempt to actively market and sell the property as required under the confirmed Fourth Amended Chapter 13 Plan.

...

The Debtors' conduct in this case under the confirmed plan have been in bad faith. Though representing to the court, and being ordered under the confirmed Fourth Amended Chapter 13 Plan, to promptly proceed with the liquidation of the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, the Debtors did not prosecute the case. The court finds that the Debtors did not prosecute the case because they were hoping realize a greater gain, gambling that the real estate market would appreciate, allowing them to exempt even more of the sales proceeds.

The gambling on a rise in the real estate market was not in good faith, and directly caused creditors to suffer unreasonable delay to their prejudice. While the Debtors have continued in the possession and use of the property without making regular, equal monthly payments to creditors with liens on the property. While a debtor may proceed with an orderly, prompt liquidation of assets as part of a Chapter 13 Plan, they cannot falsely promise to liquidate the property. Here, the Debtors actively misrepresented to the court that they would liquidate the property, while intending not to sell the property but allow it to hopefully appreciate in value. The Debtors secret, unstated "plan" has been to hold the property idle in the Chapter 13 case and then stumble in to "amend" the confirmed plan to have more time to gamble on appreciation of the property.

The Debtors' opposition that by delaying the prompt liquidation the property is alleged to have increased by $25,000.00 does not help their cause. Just because they believe that they can take more sales proceeds by violating the court order is not a basis for saying that violating the court's order and confirmed Fourth Amended Plan are justified. The Debtors' Opposition reflects that what they want, and always wanted, was a 60-month holding period in which they did not make any payments to creditors holding secured claims. Dckt. 201. Chapter 13 does not give such a "free stay," even when the Debtors attempt to manufacture a step transaction consisting of false promises to liquidate the property, and then when they fail to, request "only a little more time."

If the Debtors had any good faith intention to market and sell the property in an orderly liquidation, they would have done so within the time period specified in the

confirmed Fourth Amended Chapter 13 Plan.

Given the Debtors' conduct, the court concludes that conversion of the case to one under Chapter 7 is in the best interests of creditors. If the property is increasing in value, then the estate and creditors may well benefit from such increases. Creditors and the Chapter 7 trustee may well conclude that grounds exist for objecting to all or part of any exemption claim in the property or other assets based on the Debtors' conduct.

The court is convinced that only an independent fiduciary can consider how this estate was handled and what assets exists for the estate and to be properly be distributed to creditors. A Trustee can also dispassionately consider the professional fees paid in this case, as well as monies which the Debtors and estate received in the violation of automatic stay adversary proceeding, or collection any unpaid amounts of such judgment.

Additional Arguments at the Hearing

At the hearing the Debtors' counsel passionately argued that the court dismiss the case or allow these Debtors to dismiss the case rather than having it converted to one under Chapter 7. The Debtors represented to the court that the reason they wanted to dismiss the case was so that they could file a new Chapter 7 case on February 21, 2013, the day after this hearing.

When pressed as to why the court should not just convert the case, Debtors' counsel admitted that the reason was that the Debtors wanted to claim an even larger homestead exemption in that the state law exemption had increased since they commenced this Chapter 13 case on July 21, 2009.

It was explained to the court that after payment of the one claim secured by the real property, that of Christensen which the Debtors assert is $25,000 - $30,000, there will be significant sales proceeds in which the Debtors want to claim their homestead exemption. Their current exemption is $150,000, and they want to now take advantage of an increase to $175,000.

On the one hand the Debtors feign an inability to sell the real property as required by the Chapter 13 Plan and their commitment to creditors due to it not having sufficient value, and now they argue that it would be unfair to convert the case because it prevents them from pulling another $25,000 of value out of any sales proceeds. If the court were to accept this argument it would be falling further victim to the Debtors' fraud upon the court and

creditors.

These Debtors committed as part of their Chapter 13 Plan to conduct an orderly liquidation sale of the property. See November 14, 2011 Order Confirming Plan, Dckt. 182. The court confirmed a plan which allowed the Debtors until September 2012 to complete a sale of the property. This case having been filed in 2009, the Debtors had effectively used the Chapter 13 case to forestall any payment to Christensen for more than 3 years before they had to complete the promised liquidation of the real property. The Debtors convinced the court that the delay in confirming the plan for two years, and then getting another year to sell the property was reasonable, even though they had not made any plan payments to Christensen.

But the Debtors did not liquidate the property, and based on the facts of this case, the court concludes that they never intended to liquidate the property by September 2012. These Debtors are represented by knowledgeable counsel who clearly understood, or had the ability to understand, that the Debtors committed to and the order confirming the plan required the property to be sold by September 2012.

At the hearing counsel for the Debtor expressed some confusion over the order providing for the sale to be completed by September 2012, at one point disputing that the order so provided. The court recited the provision of the order, as well as noting for Debtors' counsel that he is the one who actually prepared the order confirming the Plan. There is, and there was, no bona fide confusion that the Debtors' promised and were ordered to complete the liquidation of the property by September 2012.

...

The court finds that the Debtors have prosecuted this Chapter 13 case and the confirmed plan in bad faith, abusing the bankruptcy process and creditors in this case. For the court to indulge the Debtors and dismiss the case is to give the Debtors a "bonus" for having mislead creditors and the court with the promise to liquidate the property by September 2012. Fraud committed on the parties and the court is not rewarded.

Though Debtors counsel mounted a spirited and aggressive fight, he is betrayed by the actions, or lack of action by his clients.

The court is also not impressed by the plea that the Debtors are 80 year old people living on retirement pensions. At one point counsel's arguments bordered on contending that his clients were and are incompetent. That cannot be true as they have actively sought and obtained orders from this court, in response to the Trustee's Motion

> they advanced a modified plan to let them serve as Debtors in a Chapter Plan for 2 more years while the "actively" liquidated the Property, and they successfully prosecuted litigation against Christensen for violating the automatic stay. If the Debtors were not competent or capable of performing a plan which provided for liquidation of the Property, counsel would not have proposed, obtained confirmation of, or seek to have the Debtors fulfill duties under a modified plan for another two years.
>
> Finally, conversion of the case is of little moment to the Debtors if their only concern is the exemption. They have a $150,000.00 exemption they have claim in this property. Amended Schedule C, Dckt. 46. If they are correct and the Christensen claim is $30,000, then the property would have to sell for in excess of $200,000 for there to be any money in excess of the Christensen claim and their homestead exemption. (Assumes a $200,000 sales price, 8% seller costs of sale, and prorated real property taxes.) If it is true that the property has a value in excess of $200,000, then it further highlights the Debtors bad faith in not proceeding with the required liquidation by September 2011."

Case No. 09-35065, Civil Minutes, Dckt. 214.

These Debtors willfully and intentionally abused the Bankruptcy Code in the prior case, breached the order confirming the Chapter 13 Plan and failed to comply with the Chapter 13 Plan for the marketing and sale of the property which secures the Christensen claim. Through misrepresentation and intentional delay, while having committed to pay Christensen several years ago, the Debtors have hung on to the property gambling on a rising real estate market. It further appears, and the court so concludes, that the Debtors intentionally misrepresented the plan in the prior case, misrepresented that they would prosecute the plan to sell this Property that secures the Christensen claim, and then sought to dismiss the prior case as part of a strategy to not only gamble on the real estate market, but obtain a higher exemption due to the passage of time.

Chapter 13 Plan in This Case

The Debtors defaulted, intentionally, in the prior Chapter 13 case as part of their strategy to abuse the Bankruptcy Code, creditors, and the federal judicial process. They did not, and now appears would not, in good faith prosecute a Chapter 13 Plan. Dckt. 5. The same questionable issues arise in the present case.

The Debtors' plan relies on the Debtors valuing the claim of Christiansen's listed at $140,000, of which the Debtors propose to pay only $7,000. The Court continued Debtors' Motion to Reconsider Motion to Avoid Lien. If the motion to avoid lien is denied, Debtors' plan does not have sufficient proceeds to pay claims within 36 months. The court having denied the Motion to Avoid Lien, the plan cannot be confirmed.

Further, the Debtors' plan is not feasible and Debtors' obligations in the plan exceed the payments. Under the Proposed Chapter 13 Plan the Debtors are proposing to may $100.00 a month payments for a period of 36 months. This $3,600.00 in payments by the Debtors is not sufficient to even fund the $5,000.00 in fees which Debtor's counsel wants for shepherding the Debtors through this second bankruptcy case so they can manufacture a larger exemption and increase the lien avoidance over the existing final order.

In addition, gifts totaling $13,000.00 will be made to the Debtors by their Daughter to fund the plan. The Debtors will use the money to pay the balance to their attorney, Trustee fees, property taxes and pay $7,000.00 to Christensen for the newly unavoided amount of their secured claim. This shows several significant signs of bad faith.

First, the Debtors admit that they have no income with which to fund a plan. Debtors' household income totals $1,466.40 and of that amount $50 is received by Bun Auyeung from Social Security, $866.40 is received by Soo Tse from Social Security and the balance $550 is provided by "assistance from daughter." Schedule I, Dckt.1, page 29. Rather than a good faith plan being funded by the Debtors, some other family members appear to be pulling the strings, quite possibly for their own financial advantage. The Debtors appear to be the poor sacrificial lambs who are being deprived of their homestead exemption while other family members appear to be lining their pockets with future gain.

The court notes that under 11 U.S.C. § 109(e), "only an individual with regular income . . . may be a debtor under chapter 13 of this title." The phrase "individual with regular income" is defined in section 101 of the Code to mean an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title." Many courts have held that "gifts" do not meet the statutory requirement for a Chapter 13 Debtor to have regular income. *In re Iacovoni*, 2 B.R. 256, 260 (Bankr. Utah 1980) (must be regular income from some source, even if welfare, pensions, or investment income); *In re McGowan*, 24 B.R. 73, 74 (Bankr. N.D. Ohio 1982);*In re Campbell*, 38 B.R. 193 (Bankr. ED NY 1984); *In re Cregut*, 69 B.R. 21, 22-23 (Bankr. Ariz 1986).

See also *Tenney v. Terry, (In re Terry)*, 630 F.2d 634, 635 (8th Cir. 1980) ("We think that § 101(24) contemplates that a debtor make payments, and that the debtor's income sufficiently exceeds his expenses so that he can maintain a payment schedule. The key statutory language is "make payments." The debtors in this case have no excess income out of which to "make payments," and therefore, they are not eligible for Chapter 13 relief under § 109(e)."); and *In re Welsh*, 2003 Bankr. LEXIS 2246 (Bankr. Idaho 2003) ("Most courts have concluded that neither § 101(30) nor § 1325(a)(6) can be satisfied by gratuitous or volunteered contributions by nondebtor third parties. See, e.g., *In re Jordan*, 226 B.R. 117, 119-20 (Bankr. D. Mont. 1998); *In re Williams*, No. 97-08824-W, 1998 WL 2016786 (Bankr. D. S.C. Jan. 13, 1998); see also 2 L. King, Collier on Bankruptcy P 101.30[4], p. 101-97 (rev. 15th ed. 2002).").

Second, no creditor with general unsecured claims have come forward to file proofs of claim. Quite possibly the "unsecured claims" do not exist or have been manufactured by the Debtors and Counsel to create the illusion

that there is some purpose for this bankruptcy case other than to try and circumvent the prior orders of this court and further abuse the federal judicial process. This Chapter 13 case appears to be nothing more than a disguised Chapter 7 which appears to be in violation of the Supreme Court's ruling in *In re Dewsnup*, 502 U.S. 410 (1992). The Claim Bar Date expired on December 26, 2013. Notice of Chapter 13 Bankruptcy Case, Dckt. 9.

This further shows that this bankruptcy case has not been filed under Chapter 13 in good faith, the plan proposed in good faith, and neither prosecuted in good faith. In upholding a good faith debtor's right to prosecute a "Chapter 20 case" and obtain the benefits of a "lien strip" upon completion of the Chapter 13 portion of the "Chapter 20" proceedings, this court has addressed the necessity for the case to be prosecuted in good faith – which include some reorganization of the debtor's finances, not merely obtaining a "lien strip." *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). FN.1.

FN.1. "Chapter 20" is a euphonium in the bankruptcy world for a debtor who first files a Chapter 7 case and obtains his or her discharge of all the dischargeable debt. Then, the debtor files a Chapter 13 case to provide for a good faith, bona fide restructuring of his or her remaining assets and non-dischargeable liabilities. As part of the 2005 BAPCA Amendments Congress restricted the ability of a debtor to obtain a discharge in the Chapter 20 setting, not allowing a discharge in the Chapter 13 leg of the coordinated proceedings if a discharge was obtained in a Chapter 7 case which was commenced within four years of commencing the Chapter 13 case.

With the fall of the real estate market after 2007, consumer debtors often filed Chapter 13 case for the purpose of "lien stripping." This is a process by which the court bifurcates a claim secured by a junior lien into a secured claim and an unsecured claim pursuant to 11 U.S.C. § 506(a). For the debtor's residence, if the court determined that the value of the secured portion of the claim was $0.00, then the debtor could provide for paying the $0.00 in the plan, and then upon completion of the plan require the creditor to reconvey the lien.

An issue arose as to whether a debtor could obtain the benefit of a "lien strip" in a Chapter 13 case where there could not be a discharge. The vast majority of court addressing that issue have concluded that such a lien strip can be obtained and is not dependent on a discharge. However, it does require that the debtor comply with the requirements of 11 U.S.C. §§ 1322 and 1325. Two of the key requirements are that the case has been commenced and the plan proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1325(a)(3), (7). This good faith requirement includes that the debtor not only qualify as a debtor but also be accomplishing a reorganization under Chapter 13.

The Debtors' attempt to improperly manipulate the Bankruptcy Code in this case is similar to that addressed by the court in *In re Tran*, 431 B.R. 230 (Bankr. N.D. Cal. 2010), *affrm. In re Tran*, 814 F.Supp. 230 (N.D. Cal. 2011). As the bankruptcy court stated, the proposed plan provided nominal payments from that debtor for creditors. Such nominal payments are one

piece of evidence that the debtor is unfairly manipulating Chapter 13 and acting in bad faith. *In re Goeb*, 675 F.2d at 1391.

> "Here, the totality of the circumstances shows that Tran filed this chapter 13 case solely for purposes of avoiding the second deed of trust under circumstances where such avoidance was not available to her in chapter 7, and where no independent reason exists for her subsequent chapter 13 filing. See In re Warren, 89 B.R. at 95 (9th Cir. BAP 1988) (holding that the court should not confirm chapter 13 plans "that are in essence veiled chapter 7 cases"); In re Caldwell, 895 F.2d 1123, 1126 (6th Cir. 1990)."

In re Tran, 431 B.R. at 237. The District Court, on appeal, found it equally improper for the debtor to file a Chapter 13 Plan solely for the purposes of obtaining a lien strip. *In re Tran*, 814 F. Supp. 2d at 951.

Such a "lien stip" is all that the Debtors are attempting to obtain in the instant case. The court has previously determined the Debtors' exemption and avoided the Christensen judgment lien - fully protecting the exemption. Only after strategically and improperly attempting to manipulate the Bankruptcy Code in their prior case, making affirmative misrepresentations to the court (which can accurately be described as "intentionally lying to the court), trying to goad the court into "punishing the Debtors" by dismissing the prior case (thereby setting aside the final orders in that case and freeing the Debtors to file a new case to relitigate issues), and being "punished" by obtaining a discharge of all of their debts, the Debtors are now embarking on filing a serial bankruptcy case to circumvent the bankruptcy and the law established by the Supreme Court in *Dewsnup*.

In reviewing the Schedules filed by the Debtors under penalty of perjury, the court notes the following:

a. Debtors' personal property consists of $70.00 in cash and bank accounts, $450.00 in household goods and effect, $25.00 in clothing, and nothing else.

b. On Schedule I the Debtors list only $916.40 in Social Security Benefits, plus an additional $550.00 a month in assistance from a Daughter.

c. The Debtors' expenses shown on Schedule J are $1,365.00 a month. To achieve this number the Debtors state, under penalty of perjury, that they spend only $250.00 a month on food, $2.00 on home maintenance, $9.00 on clothing, $100.00 on transportation, and $323.00 on auto insurance (though no car is listed on Schedule B and the Debtors state under penalty of perjury that they have no interest in any automobiles).

Schedules, Dckt.1.

Interestingly, when the prior case was converted to one under

Chapter 7, the Debtors stated that Bun Auyeung alone had $2,200.00 a month in pension and retirement income. Chapter 7 Statement of Income, Dckt. 222.

Additionally, Debtors list minimal household expenses on their Schedule J for their household. For example, Debtors list $165 electricity and heating, $68.07 water/sewer, $65 cable/internet, $2 for home maintenance, $250 for food, $9 for clothing, $25 for laundry/dry cleaning, $22 for medical/dental, $100 for transportation, $10 for recreation, $48 for homeowners insurance, $323 for auto insurance and $278.86 for real estate tax. The court is concerned over the very minimal expense for food and healthcare the Debtors have listed and may have created this unrealistic budget to give the appearance that they can afford their plan.

The court has coined a phrase over the years concerning Debtors who "creatively" state under penalty of perjury their expenses on Schedule J or in declarations to create the appearance that a plan could be feasible – "Liar Declarations." A practice developed among the consumer bar to accede to their clients desire to retain some asset that they would let the Debtors lie about expenses because, "the client wants to give it a try, no matter how financially irrational or irresponsible." Judges throughout the District, once learning of the consumer attorneys allowing such "Liar Declarations," have acted to require the truthful, honest statements by parties under penalty of penalty of perjury. There is no "bonus for lying" in the Eastern District of California."

From a review of the Schedules, it appears that the Debtors are engaging in such "Liar Declarations" as to both their income and expenses. Possibly they are getting more assistance from their children. Maybe they have undisclosed assets and income. The court does not know, but it is obvious from Schedules I and J that the numbers don't add up.

It may be that whomever is pulling the financial strings, and has set in forth a pattern which has worked to deprive the Debtors of their homestead exemption for almost five years now (from the time they could have sold their home in the prior case) from receiving the financial benefits of that money than living in what, if Schedules I and J are taken as true, being forced to live in abject poverty with barely the shirt on their back and little food to eat.

Third, in April 2012, the court granted judgment for the Debtors in the amount of $15,259.95 (of which $3,900.00 was for legal fees) against Christensen. Judgment, 10-2497 Dckt. 72. Though presumably collected, this $15,259.95 is not otherwise accounted for by these Debtors who present themselves as qualified Chapter 13 Debtors. Possibly these monies were taken from the Debtors by those who are calling the financial shots and looking to invest $13,000.00 to take even more through the Debtors' homestead exemption.

In the prior case, the court granted the Debtors' Motion and avoided the Christensen lien for all amounts in excess of $140,000.00. This was based upon the evidence presented by the Debtors and Christensen at trial. Though the Debtors contended that the Property secured by the Judgment Lien had a value of only $130,000.00, and by the time of the evidentiary hearing were arguing that the Property had a value of $200,000 to $240,000 for the

land, but it would cost $40,000.00 to demolish the structure on the Property to get that land value. Though Christensen advanced the arguments and presented evidence in support of a $375,000.00 value for the Property, the court ultimately determined that the Property had a value in 2009 of $290,000. Thus, after allowing for the Debtors' $150,000.00 homestead exemption, there was only $140,000.00 of value left for the judgment lien.

Presumably, if the Debtors were interested in prosecuting their rights in good faith, they would have moved to sell the property, obtained their $150,000.00 in exempt monies, and moved on with their fresh start. These Debtors did not. Rather, the Debtors (or someone else) is attempting to improperly manipulate the Bankruptcy Code to increase the Debtors' exemption from $150,000.00 to $175,000.00. For that extra $25,000.00 the Debtors have lived (if their Schedules I and J under penalty of perjury are to be believed) in a deplorable state. Attached to the exhibits filed in support the Motion to Avoid the Christensen Lien in this case is a March 18, 2013 appraisal report by David Labella. Exhibit C, Dckt. 107.

Interestingly, Mr. Labella's appraisal of $185,000.00 is exactly the amount the Debtors need to use their now asserted $175,000.00 homestead exemption and leave next to nothing for the Christensen Lien. The LaBella Appraisal Report includes pictures of the Property which are shocking. The house appears to be falling down with internal framing exposed on the exterior. Sheeting material, in tatters, appears to be hung from the gutters to try and cover the exposed internal framing.

The interior photographs could be promotional shots for the television series "Hoarders," with "personal property piled high in the rooms with only a narrow path for the Debtors to navigate. FN.2. The ceiling and walls are stained with what appears to be water damage and furniture (such as a dining table, chairs, and couch) are piled high with personal property.

FN.2. The television show "Hoarders" is a series on the A&E Network. A description of the series provided by MSN Entertainment is,

> "'Hoarders' is an often painful look inside a disease that can bury its sufferer -- literally at times -- in its symptoms. Each hour long episode profiles two people on the verge of a personal crisis, all caused by the fact that they are unable to part with even the tiniest possessions, and the cumulative effect becomes a mountain of junk and garbage overtaking their home or apartment. If they don't respond to professional help, the consequences sometimes involve eviction, kids being taken away, or even jail time."

http://tv.msn.com/tv/series/hoarders/.

In his appraisal report, Mr. LaBella provides his description of the Property, stating [emphasis added],

> "The subject property has a single family residence and

> several outbuilding that are that are in very dilapated [sic.] condition. The main residence has **severe water and mold damage from a leaking roof**. The **interior has evidence of rodent infestation** and **floor dry rot in many places**. The highest and best use would be to demolish the present improvements and utilize the property as a rural homesite."

Exhibit C, Dckt. 107.

For going on six years now the Debtors, with the assistance of their counsel and whomever else is controlling the Debtors or directly counsel, have worked ever hard to remain in the rat feces strewn, mold invested, dry rot damaged, interior framing exposed home which needs to be demolished rather than taking their $150,000.00 homestead exemption and move into safe, healthy living conditions. No good, rational reason has been presented for such conduct. (The court does not accept counsel's argument as either persuasive or in good faith that "these people" are from a foreign country so this is how they live.") Rather, it is evidence that either the Debtors, or whomever is controlling the Debtors, are not acting in good faith or that the Debtors do not have the minimum capacity to prosecute a bankruptcy case in their best interests.

There is another aspect to this case which is causing the court greater and greater concern. Counsel has made statements before that while the Debtor was educated and a neurosurgeon [in China or Taiwan], he is not anymore. The co-Debtor tries to understand American society, but neither the Debtor nor Co-Debtor have that comprehension. Neither of the Debtors speak English. All of the communications between Counsel and the Debtors is made through the Debtors' daughter (as apparently are all of this court's rulings). Transcript of April 22, 2014 Hearing on Motion to Avoid Lien, pgs. 18:16-19, 19:5-11; Dckt. 141.

The Debtors living in rat feces strewn, mold invested, dry rot decaying, exposed to the elements dilapidated conditions, the court has to question who has the most to gain by the Debtors continuing to maintain such a life style. Only one child of the Debtors has been brought to the court's attention – the one person who is translating all of the communications to between counsel and the Debtors, as well as translating the rulings of the court. If there is one person who appears to have a financial interest in preventing the Debtors from using their $150,000.00 homestead exemption to provide clean, habitable conditions for their remaining days on this earth, it appears to be the daughter. Based on the objection conduct of the parties, counsel should be questioning either the communications with his clients or their legal competency. FN.3.

FN.3. Given that the Debtors do not have the regular income to fund a plan and that substantially all (77%) of the "plan payments" are to be funded by the daughter, it appears that counsel's ability to be paid is dependent on daughter making the funds available. The latest proposed plan provides for counsel to be paid through the plan, with counsel's recent fee application (Dckt. 174) requesting $12,030.00 in attorneys' fees. This payment of counsel's attorneys' fees by daughter further complicates the case and whether the Debtors are able to competently prosecute this case.

This is a very sad state of affairs, which may very well warrant inquiry on many fronts concerning the possible abuse of these Debtors and may warrant dismissal.

Based on the evidence provided in support of confirmation, the court finds that the Debtors have filed this plan in bad faith. The failure of a purpose of filing the Chapter 13 plan, the inaccuracy of the plan statements and the statements made in Schedules I and J, the infeasibility of the plan, and the filing and dismissal of the prior bankruptcy case reveal that the Debtors have acted in bad faith. The Debtors have filed this case in order to take advantage of an increased allowable homestead exemption in order to reduce the Christensen lien on the property and are attempting to circumvent events that transpired in the prior case. There is no reorganization or rehabilitation to be obtained through a Chapter 13 case. The plan is not feasible and Debtors have provided liar schedules and declarations in support thereof.

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.

14. 13-30919-E-13 BUN AUYEUNG AND SOO TSE — CONTINUED MOTION TO AVOID LIEN OF BARTON AND PAULA CHRISTENSEN
PGM-4 Peter G. Macaluso — 1-29-14 [104]

CONT. FROM 6-10-14, 4-22-14, 3-4-14

Tentative Ruling: The Motion to Avoid 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on January 29, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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 decision is to deny the Motion to Avoid a Judicial Lien.

JULY 22, 2014 HEARING

The court has denied the Debtors motion to confirm a plan in this case, determining that (1) the Debtors do not quality as Chapter 13 Debtors, (2) the bankruptcy case has not been filed in good faith, (3) the bankruptcy plan has not been proposed in good faith, and (4) the Debtors have not prosecuted the bankruptcy case in good faith. Therefore, there is no reason for the court to proceed with causing the Creditor, Debtors, and the court to conduct further hearings on this Motion, as there appears to be no legal reason for doing so.

JUNE 10, 2014 HEARING

The court continued the hearing for a status conference to schedule discovery in connection with a plan, if any. The court notes that Debtor filed and set a Chapter 13 Plan for July 1, 2014.

APRIL 22, 22014 HEARING

The court continued the hearing to allow the parties to brief the specific issue of judicial estoppel.

On March 19, 2014, Barton and Paula Christensen ("Creditor") filed their supplemental brief. Creditor argues that Debtors are confusing the doctrines of equitable estoppel and judicial estoppel. Mr. Macaluso claimed that the element of "reliance" was missing, but this is not an element of judicial estoppel. Creditor argues that because the integrity of the judiciary would be threatened by allowing Debtors to proceed with its Motion on this third attempt and Second Bankruptcy, judicial estoppel is appropriate. Dckt. 129.

On April 1, 2014, Movant filed their supplemental brief, arguing that the particular facts and circumstances here are that the debtors have not adopted any inconsistent positions, no inconsistent statements, which were accepted by the court, or would provide the debtors with an unfair advantage if not estopped. Debtor argues that there are two separate and distinct bankruptcy estates, two filing dates, two case numbers, two exemptions allowances, two fair market values, and two entirely different cases and as such, judicial estoppel is not applicable. Dckt. 135.

ORIGINAL HEARING

Debtor moves to avoid the lien of Barton and Paula Christensen (collectively "Christensen"). A judgment was entered against the Debtor in favor of the Christensen for the sum of $300,000.00 to be disbursed as follows: $144,000 to the Christensen's, $30,000.00 to the Hatada's and $126,000.00 to Dance Hall Investors. The abstract of judgment was recorded with Sacramento County on September 12, 2008. That lien attached to the Debtor's residential real property commonly known as 6311 Point Pleasant Road, Elk Grove, California.

On October 1, 2013, Christensen filed a Proof of Claim with the court in the amount of $140,000.00. Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $185,000.00 as of the date of the petition. The unavoidable liens total $3,014.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000.00 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. Debtor argues that the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing should be avoided in excess of $7,000.00 subject to 11 U.S.C. § 349(b)(1)(B).

CREDITOR'S OPPOSITION

Barton and Paula Christensen ("Creditor") oppose the motion on the basis that the claim has been merged into judgment, *res judicata* and

collateral estoppel apply, double recovery applies and the Debtors acted in bad faith.

Creditor first argues that the Debtors cannot re-litigate this issue because their claims have been extinguished and replaced by the Judgment. However, it does not appear that the Debtors seek to re-litigate the claims that were litigated and resulted in the judgment. Rather, they seek to avoid the judgment pursuant to 11 U.S.C. § 522(f).

Second, the Creditor argues that *res judicata* and collateral estoppel apply. Creditor is argues that the Motion to Avoid Lien of Barton and Paula Christensen in Case No. 09-35065, Dckt. 108, should have preclusive effect.

Third, Creditor argues that double recovery is impermissible and Debtor should not be able to avoid this judgment lien because it would further reduce their lien. Creditor states they already received a prior order avoiding the judgment lien, now have adjusted their higher exemption and seek additional avoidance.

Lastly, Creditor argues that judicial estoppel should be applied because Debtors have acted in bad faith. Creditors state that this case was filed simply to re-file this motion to avoid lien, claim a higher homestead exemption, and reduce the creditor's claim for a second time.

LEGAL STANDARDS

Collateral Estoppel and Res Judicata

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

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

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

Additionally, the determination of value for purposes of 11 U.S.C. § 506(a) is made only for specific purposes and the value may be determined at different times depending on the purpose of the valuation. In *Gold Coast Asset Acquisition, L.P. v. 1221 Veteran Street Co. (In re Veteran Street*

Co.), 144 F.3d 1288 (9th Cir. 1998), the Ninth Circuit Court of Appeals concluded that a valuation of property pursuant to 11 U.S.C. § 506(a) was not binding between the parties when it was not being used for the purpose for which the valuation was made in that case (confirmation of plan).

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

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

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

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

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

Id. at 970, citing *Clark v. Bear Sterns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992).

In the Debtors first Chapter 13 case, which was converted to one under Chapter 7, the court granted the Debtor's motion to avoid Creditor's judgment lien on the Point Pleasant Property. In granting that motion, the court determined the value of the subject real property as of the date of the filing of the petition in order to apply the arithmetical formula

required by 11 U.S.C. § 522(f)(2)(A). The Order determined that the judgment lien of Barton and Paula Christensen against the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, was avoided pursuant to section 11 U.S.C. § 522(f)(1)(A) for all amounts of the judgment in excess of $140,000.00. Order Granting Motion to Avoid Lien that Impairs and Exemption Pursuant to Section 522(f)(1)(A); 09-35065 Dckt. 108. The exemption protected by this avoiding pursuant to 11 U.S.C. § 522(f) was in the amount of $150,000.00 claimed pursuant to California Code of Civil Procedure § 704.730(a)(3).

In the prior Chapter 7 case the Debtors filed a second motion to avoid the lien of creditors, seeking to assert a $150,000.00 exemption pursuant to California Code of Civil Procedure § 704.730(a)(3), based upon one of the Debtors having aged sufficiently during the four years of that case to qualify for a higher exemption. 09-35065 Dckt. 246. The court denied the second motion to avoid the lien, holding that the exemption amount and value of the property and the amount of the exemption were properly determined at the time the case was filed. Civil Minutes, *Id.* at 271.

The Debtors' prior Chapter 7 case was closed on August 19, 2013, four years after the Debtors commenced that case under Chapter 13. The present case was filed on August 9, 2013. In the present Chapter 13 case the Debtors have sought to have the court avoid the Creditor's lien based on the amount of the exemption and value of the Property as of August 19, 2013.

Through the Motion now before the court Debtors seek to have the judicial lien avoided a second time in the present Chapter 13 case. Beginning with the plain language of 11 U.S.C. § 522, the framework for this analysis is as follows:

a. The term "value" means "fair market value as of the date of the filing of the petition, or with respect to property that becomes property of the estate, as of the date such property becomes property of the estate. 11 U.S.C. § 522(a)(2).

b. The statutory exemption claimed by the Debtors arises under California law. 11 U.S.C. § 522(b)(2), California Code of Civil Procedure § 704.730(a)(3).

c. A debtor may avoid the fixing of any lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled to under 11 U.S.C. § 522(b), if such lien is –

   i. A judicial lien securing a debt (other than debt nondischargeable pursuant to § 523(a)(5). 11 U.S.C. § 522(f)(1)(A).

California Code of Civil Procedure § 703.140 states,

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of

> subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:
>
> (1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
>
> (2) 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).
>
> (3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
>
> (b) The following exemptions may be elected as provided in subdivision (a):
>
> (1) The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars ($24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

Thus, Section 703.140 allows debtors to choose either the exemptions that state law already provides for judgment debtors or to choose the exemptions contained therein.

The Exemption claimed by Debtors arises under California Code of Civil Procedure § 704.730(a)(3) and is in the amount of $175,000.00. The Debtors value the Property at $185,000.00, based on the appraisal testimony of David LaBella.

California Code of Civil Procedure § 704.730(a)(3) provides that the "homestead exemption" is provided to be $175,000.00 if the judgment debtor or spouse who reside in the homestead, at the time of the attempted sale,

are (1) 65 years of age or older, (2) physically or mentally disabled, or (3) at least 55 years of age and have a gross income of not more than $25,000.00 if single or not more than $35,000.00 if married.

The section in its entirety states,

> § 704.730. Amount of homestead exemption
>
> (a) The amount of the homestead exemption is one of the following:
>
> (1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).
>
> (2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.
>
> (3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:
>
> (A) A person 65 years of age or older.
>
> (B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

Cal. Code Civ. Proc. § 704.730.

State law generally determines the existence and scope of the debtor's interest in property. *Butner v. United States*, 440 U.S. 48, 54 (1979). Absent some compelling federal interest requiring a different result, there is no reason why property interests should be analyzed differently simply because one of the parties is in bankruptcy. *Id.* Notwithstanding this general proposition, the role of § 522(f) in providing the debtor a fresh start constitutes such a compelling federal interest that it provides a debtor with greater rights in bankruptcy than generally available under state law. *In re Mulch*, 182 B.R. 569, 574 (Bankr. N.D. Cal. 1995).

It is well-settled that a debtor's exemption rights are determined as of the petition date. *In re Herman*, 120 B.R. 127, 130 (B.A.P. 9th Cir. Cal. 1990). Absent conversion from one chapter to another, the nature and extent of a debtor's exemption rights are determined as of the date of the petition. *Id.*, *see also In re Seyfert*, 97 Bankr. 590 (Bankr. S.D. Cal. 1989); *In re Magallanes*, 96 Bankr. 253, 255 (9th Cir. BAP 1988). As discussed in *In re Herman*, this reasoning is consistent with bankruptcy's fresh start purposes,

> A debtor undergoes the significant detriments inherent in filing bankruptcy in exchange for protection from certain creditors and a "fresh start." The ability to exempt property and avoid certain liens on exempt property is intended to facilitate the fresh start. See *Galvan*, 110 Bankr. at 449-51. If a judgment creditor were allowed to use post-petition events to defeat an exemption or defeat an attempt to avoid a judicial lien under section 522(f), the fresh start purposes of the Code would be significantly eroded. Furthermore, this reasoning does not conflict with the holding of prevailing Ninth Circuit authority such as In re Cole, supra, and In re Golden, 789 F.2d 698 (9th Cir. 1986), neither of which specifically discuss the relevant date for determining the existence of a homestead exemption.

Therefore, the nature and extent of debtor’s exemption rights are determined under the applicable state law as of the date of the petition, August 19, 2013. Petition, Dckt. 1.

Equitable Doctrines

The key difference between the doctrines of claim and issue preclusion and equitable doctrines, such as equitable estoppel and judicial estoppel is that the equitable doctrines focus upon *conduct* and that claim and issue preclusion turn merely on the existence of an adjudication. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)*, 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002).

> Equitable estoppel requires the following elements:
>
> (1) The party to be estopped must know the facts;
>
> (2) He must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
>
> (3) The latter must be ignorant of the true facts; and
>
> (4) He must rely on the former's conduct to his injury.

United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978). Since estoppel is an equitable doctrine, it should be applied “where justice and fair play require it.” *Id.*

Judicial estoppel is an equitable doctrine that encompasses a

variety of different situations that revolve around the concern for preserving the integrity of the judicial process. *In re Associated Vintage Group, Inc.*, 283 B.R. at 565. The doctrine extends to incompatible statements and positions in different cases. *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597 (9th Cir. 1996).

> Independent of unfair advantage from inconsistent positions, judicial estoppel may be imposed: out of "general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings;" or to "protect against a litigant playing fast and loose with the courts." *Hamilton*, 270 F.3d 778 at 782; *Russell*, 893 F.2d at 1037. Moreover, it may be invoked "to protect the integrity of the bankruptcy process." *Hamilton*, 270 F.3d 778 at 785.

In re Associated Vintage Group, Inc., 283 B.R. at 556. The Ninth Circuit requires that the inconsistent position have been "accepted" by the first court. *Id.*

In addressing judicial estoppel, the Supreme Court has stated,

"Although we have not had occasion to discuss the doctrine elaborately, other courts have uniformly recognized that its purpose is "to protect the integrity of the judicial process," *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (CA6 1982), by "prohibiting parties from deliberately changing positions according to the exigencies of the moment," *United States v. McCaskey*, 9 F.3d 368, 378 (CA5 1993). See In re Cassidy, 892 F.2d 637, 641 (CA7 1990) ("Judicial estoppel is a doctrine intended to prevent the perversion of the judicial process."); *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1166 (CA4 1982) (judicial estoppel "protects the essential integrity of the judicial process"); *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (CA3 1953) (judicial estoppel prevents parties from "playing 'fast and loose with the courts'" (quoting Stretch v. Watson, 6 N.J. Super. 456, 469, 69 A.2d 596, 603 (1949))). Because the rule is intended to prevent "improper use of judicial machinery," *Konstantinidis v. Chen*, 200 U.S. App. D.C. 69, 626 F.2d 933, 938 (CADC 1980), judicial estoppel "is an equitable doctrine invoked by a court at its discretion," *Russell v. Rolfs*, 893 F.2d 1033, 1037 (CA9 1990) (citation omitted)."

New Hampshire v. Maine, 532 U.S. 742, 750-751 (2001)

The Supreme Court identified several typical factors to be considered:

A. "[A] party's later position must be "clearly inconsistent" with its earlier position. *United States v. Hook*, 195 F.3d 299, 306 (CA7 1999); *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 206 (CA5 1999); *Hossaini v. Western Mo. Medical Center*, 140 F.3d 1140, 1143 (CA8 1998); *Maharaj v. Bankamerica Corp.*, 128 F.3d 94, 98 (CA2 1997)."

B. "[C]ourts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier

position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled," *Edwards*, 690 F.2d at 599. Absent success in a prior proceeding, a party's later inconsistent position introduces no "risk of inconsistent court determinations," *United States v. C. I. T. Constr. Inc.*, 944 F.2d 253, 259 (CA5 1991), and thus poses little threat to judicial integrity. See Hook, 195 F.3d at 306; *Maharaj*, 128 F.3d at 98; *Konstantinidis*, 626 F.2d at 939."

C. "[W]hether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. See Davis, 156 U.S. at 689; Philadelphia, W., & B. R. Co. v. Howard, 54 U.S. 307, 13 HOW 307, 335-337, 14 L. Ed. 157 (1852); *Scarano*, 203 F.2d at 513 (judicial estoppel forbids use of "intentional self-contradiction . . . as a means of obtaining unfair advantage"); see also 18 Wright § 4477, p. 782."

D. "In enumerating these factors, [the Supreme Court does not] establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts."

Id. at 750-751.

In *Ah Quin v. County of Kauai DOT*, 733 F.3d 267 (9th Cir. 2013), the Ninth Circuit Court of Appeals addressed the application of judicial estoppel to bar a debtor from asserting claims in a subsequent law suit with the debtor failed to on the bankruptcy schedules. In deciding whether the debtor was barred from asserting the claims in the subsequent action, the Ninth Circuit determined that even though the debtor had subsequently amended her schedules to list the claim, three primary factors had been met: (1) misstatement which created an inconsistency, (2) bankruptcy court having accepted the contrary position (the schedules having been filed and relied upon), and (3) it was to the debtor's unfair advantage (attempting to get the claim by the bankruptcy trustee and creditors). The issue for remand to the district court was whether it was an inadvertent misrepresentation or intentional.

DISCUSSION

Prior Rulings and Bankruptcy Case

Debtors' prior bankruptcy case was filed as a Chapter 13 case on July 21, 2009. Bankr. E.D. Cal. No. 09-35065. The case was converted to one under Chapter 7 by order filed on February 25, 2013. 09-35065 Dckt. 216. In deciding to convert the case to one under Chapter 7, the court found that the Debtors were not prosecuting the Chapter 13 case in good faith, including affirmatively making misrepresentations to the court.

"Rather than proceeding in good faith to timely

comply with the confirmed bankruptcy plan, the Debtors have demonstrated that they are merely engaging in a gamble on the current real estate market. The Debtors are gambling with the creditors' money that the market will rise, allowing the Debtors to pocket more money from a sale. If the market goes down, then creditors can bear the risk (suffer the loss).

The Debtors have obtained two and one-half years of bankruptcy court protection, with all to show is that they will, sometime in the future, do what they have promised to do in the past if they determine that the real estate market has risen high enough for them to make more money by improperly delaying creditors.

The Debtors are not appearing, testifying, and making representations to this court in good faith. Rather, they have acted to mislead the court, creditors, the Chapter 13 Trustee, and other parties in interest.

No evidence is filed in opposition to the Motion to Dismiss, but merely short arguments of counsel. Such argument is not evidence of the facts alleged therein. The absence of such evidence causes the court to infer that such information is wholly unsupported. Even when afforded the opportunity to file supplemental pleadings, the Debtors merely had their attorney file a Supplemental Reply arguing why the case should not be dismissed. The Debtors have been careful not to make any statements under penalty of perjury to the court.

At the January 9, 2013 hearing the Debtors asked the court to continue the hearing to allow Debtors to sell the property. Such would allow them to profit from their misrepresentations to the court. Debtors' supplemental opposition states that Debtors have obtained a real estate agent and that the sale price is listed as $200,000 instead of the $250,000 initially stated by Debtors. Counsel for the Debtors argues that a modified plan will provide for all increases in value to go to creditors, with the Debtors reducing their exemption. However, the court's review of the docket indicates that a modified plan has not been filed.

In confirming the current Chapter 13 Plan, the Debtors testified under penalty of perjury that they would sell their real property to pay all lien holders and Class 2 claims in full. Declaration, ¶¶ 6, 7, Dckt. 168. In fighting to confirm the plan against opposition on the Debtors' continuing delay, the Debtors represented to the court that they had entered into a one-year listing agreement, September 26, 2011 through September 26, 2012, and were listing the property for sale for $290,000.00. Reply, Dckt. 177. Further, "The debtor's [sic.] intend to reduce the asking price accordingly over the 12 month period

so that the sale occurs on or before September of 2012..." *Id.*

The court harmonized the requirements for equal monthly payments specified in 11 U.S.C. § 1325(a)(5)(B)(iii)(1) with the rehabilitation aspect of Chapter 13 and the ability of a debtor to provide for the prompt orderly liquidation of assets through a plan to provide for creditors and protect exempt interests in assets. Civil Minutes for October 14, 2011 Confirmation Hearing, Dckt. 180. The court expressed clear concern over the Debtors' continuing failure to address the issues raised in the prior confirmation hearing (confirmation denied) and unreasonable delay in the prosecution of a plan and liquidation thereunder.

Though the court's November 14, 2011 confirmation order expressly requires that the Debtors' shall immediately list the property for sale at $290,000.00 and shall have the property liquidated (sold) by September 2012, the Debtors did not actively attempt to sell the property. Rather, they impeded the sale of the property, seeking to gamble that the real estate market would increase and they could pocket more the sales proceeds.

The Debtors, in responding to this Motion, have been very careful not to provide any explanation under penalty of perjury as to the efforts they made to market and sell the property. From this lack of testimony the court infers that such testimony would be adverse to the Debtors – showing that they did not attempt to actively market and sell the property as required under the confirmed Fourth Amended Chapter 13 Plan.

...

The Debtors' conduct in this case under the confirmed plan have been in bad faith. Though representing to the court, and being ordered under the confirmed Fourth Amended Chapter 13 Plan, to promptly proceed with the liquidation of the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, the Debtors did not prosecute the case. The court finds that the Debtors did not prosecute the case because they were hoping realize a greater gain, gambling that the real estate market would appreciate, allowing them to exempt even more of the sales proceeds.

The gambling on a rise in the real estate market was not in good faith, and directly caused creditors to suffer unreasonable delay to their prejudice. While the Debtors have continued in the possession and use of the property without making regular, equal monthly payments to creditors with liens on the property. While a debtor may proceed with an orderly, prompt liquidation of assets as part of a Chapter 13 Plan, they cannot falsely promise to liquidate

the property. Here, the Debtors actively misrepresented to the court that they would liquidate the property, while intending not to sell the property but allow it to hopefully appreciate in value. The Debtors secret, unstated "plan" has been to hold the property idle in the Chapter 13 case and then stumble in to "amend" the confirmed plan to have more time to gamble on appreciation of the property.

The Debtors' opposition that by delaying the prompt liquidation the property is alleged to have increased by $25,000.00 does not help their cause. Just because they believe that they can take more sales proceeds by violating the court order is not a basis for saying that violating the court's order and confirmed Fourth Amended Plan are justified. The Debtors' Opposition reflects that what they want, and always wanted, was a 60-month holding period in which they did not make any payments to creditors holding secured claims. Dckt. 201. Chapter 13 does not give such a "free stay," even when the Debtors attempt to manufacture a step transaction consisting of false promises to liquidate the property, and then when they fail to, request "only a little more time."

If the Debtors had any good faith intention to market and sell the property in an orderly liquidation, they would have done so within the time period specified in the confirmed Fourth Amended Chapter 13 Plan.

Given the Debtors' conduct, the court concludes that conversion of the case to one under Chapter 7 is in the best interests of creditors. If the property is increasing in value, then the estate and creditors may well benefit from such increases. Creditors and the Chapter 7 trustee may well conclude that grounds exist for objecting to all or part of any exemption claim in the property or other assets based on the Debtors' conduct.

The court is convinced that only an independent fiduciary can consider how this estate was handled and what assets exists for the estate and to be properly be distributed to creditors. A Trustee can also dispassionately consider the professional fees paid in this case, as well as monies which the Debtors and estate received in the violation of automatic stay adversary proceeding, or collection any unpaid amounts of such judgment.

Additional Arguments at the Hearing

At the hearing the Debtors' counsel passionately argued that the court dismiss the case or allow these Debtors to dismiss the case rather than having it converted to one under Chapter 7. The Debtors represented to the court that the reason they wanted to dismiss the case was so

that they could file a new Chapter 7 case on February 21, 2013, the day after this hearing.

When pressed as to why the court should not just convert the case, Debtors' counsel admitted that the reason was that the Debtors wanted to claim an even larger homestead exemption in that the state law exemption had increased since they commenced this Chapter 13 case on July 21, 2009.

It was explained to the court that after payment of the one claim secured by the real property, that of Christensen which the Debtors assert is $25,000 - $30,000, there will be significant sales proceeds in which the Debtors want to claim their homestead exemption. Their current exemption is $150,000, and they want to now take advantage of an increase to $175,000.

On the one hand the Debtors feign an inability to sell the real property as required by the Chapter 13 Plan and their commitment to creditors due to it not having sufficient value, and now they argue that it would be unfair to convert the case because it prevents them from pulling another $25,000 of value out of any sales proceeds. If the court were to accept this argument it would be falling further victim to the Debtors' fraud upon the court and creditors.

These Debtors committed as part of their Chapter 13 Plan to conduct an orderly liquidation sale of the property. See November 14, 2011 Order Confirming Plan, Dckt. 182. The court confirmed a plan which allowed the Debtors until September 2012 to complete a sale of the property. This case having been filed in 2009, the Debtors had effectively used the Chapter 13 case to forestall any payment to Christensen for more than 3 years before they had to complete the promised liquidation of the real property. The Debtors convinced the court that the delay in confirming the plan for two years, and then getting another year to sell the property was reasonable, even though they had not made any plan payments to Christensen.

But the Debtors did not liquidate the property, and based on the facts of this case, the court concludes that they never intended to liquidate the property by September 2012. These Debtors are represented by knowledgeable counsel who clearly understood, or had the ability to understand, that the Debtors committed to and the order confirming the plan required the property to be sold by September 2012.

At the hearing counsel for the Debtor expressed some confusion over the order providing for the sale to be completed by September 2012, at one point disputing that the

> order so provided. The court recited the provision of the order, as well as noting for Debtors' counsel that he is the one who actually prepared the order confirming the Plan. There is, and there was, no bona fide confusion that the Debtors' promised and were ordered to complete the liquidation of the property by September 2012.
> ...
>
> The court finds that the Debtors have prosecuted this Chapter 13 case and the confirmed plan in bad faith, abusing the bankruptcy process and creditors in this case. For the court to indulge the Debtors and dismiss the case is to give the Debtors a "bonus" for having mislead creditors and the court with the promise to liquidate the property by September 2012. Fraud committed on the parties and the court is not rewarded.
>
> Though Debtors counsel mounted a spirited and aggressive fight, he is betrayed by the actions, or lack of action by his clients.
>
> The court is also not impressed by the plea that the Debtors are 80 year old people living on retirement pensions. At one point counsel's arguments bordered on contending that his clients were and are incompetent. That cannot be true as they have actively sought and obtained orders from this court, in response to the Trustee's Motion they advanced a modified plan to let them serve as Debtors in a Chapter Plan for 2 more years while the "actively" liquidated the Property, and they successfully prosecuted litigation against Christensen for violating the automatic stay. If the Debtors were not competent or capable of performing a plan which provided for liquidation of the Property, counsel would not have proposed, obtained confirmation of, or seek to have the Debtors fulfill duties under a modified plan for another two years.
>
> Finally, conversion of the case is of little moment to the Debtors if their only concern is the exemption. They have a $150,000.00 exemption they have claim in this property. Amended Schedule C, Dckt. 46. If they are correct and the Christensen claim is $30,000, then the property would have to sell for in excess of $200,000 for there to be any money in excess of the Christensen claim and their homestead exemption. (Assumes a $200,000 sales price, 8% seller costs of sale, and prorated real property taxes.) If it is true that the property has a value in excess of $200,000, then it further highlights the Debtors bad faith in not proceeding with the required liquidation by September 2011."

09-35065, Civil Minutes, Dckt. 214.

The Debtors are attempting to pick the best from all worlds. They get their prior Chapter 13 case converted to Chapter 7 due to their

misconduct. They file a new Chapter 13 case, providing a *di minimis* payment, premised on having obtained a discharge in the prior case. Then they seek to take away the lien of Christensen, paying them nothing as an unsecured claim. The Debtors failure of good faith has continued to the present case. Chapter 13 Plan, Dckt. 5.

Rulings on Motion to Avoid Lien in Prior Case

The court has also reviewed its ruling in the prior bankruptcy case when the Debtors sought to avoid this judgment lien. The court determined that it is the petition date for which the values are determined for the § 522(f) lien avoidance. Civil Minutes, 09-35065 Dckt. 271. It appears that after that ruling the Debtors and their attorney chose to "take a dive" and attempt to circumvent the rulings in that case by choosing not to avoid the lien in that case.

As the court recalls in that case, the Debtors pleaded with the court to allow them to dismiss the case so they could (after having improperly delayed and make affirmative misrepresentations to the court) file a new case and manufacture a larger exemption – apparently not satisfied with the substantial California homestead exemption already afforded them. Not being able to directly manufacture the exemption increase, they are now trying to do it indirectly, exhibiting the same disdain for the judicial process and their duties and obligations in federal court, including the provisions of Federal Rule of Bankruptcy Procedure 9011.

In ruling on the Debtors' attempts to manufacture a higher exemption in the prior case, the court expressly determined that they and Christensen were bound by the final order determining lien avoidance in that case. That ruling, of which the Debtors are fully aware, is equally applicable in this case.

> The issue of avoiding the judgment lien between the Debtors and Creditors has been determined by final order of this court in this bankruptcy case. Once a final order or judgment has been entered, relief may be sought by appeal or pursuant to Federal Rule of Civil Procedure 60. Moores Federal Practice Third Edition, § 132.20[2]. Here, the prior order avoiding the judgment lien of creditors was a final and appealable judgment. The Bankruptcy Code expressly provides that such order remains in full force and effect unless the bankruptcy case is dismissed. 11 U.S.C. § 349(b)(1)(B). No other provision exists under the Bankruptcy Code setting aside a final order avoiding a judgment lien, other than by appeal or relief under Rule 60.
>
> The court concludes that the provisions of 11 U.S.C. § 348(f)(1)(B) and (C) do not work to set aside the final order avoiding the Creditors lien in this case. The focus of these provisions are valuations of claims, for which property must be valued, for treatment of the claims in the bankruptcy case. Commonly, a creditors secured claim is valued pursuant to 11 U.S.C. § 506(a) to reduce the amount

which has to be paid as a secured claim through a plan. This allows the debtor to obtain a lien strip and have the lien removed from his or her property upon payment of less than the full amount of the secured debt. See *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), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013). The Debtors in this case did not seek to value Creditors secured claim pursuant to 11 U.S.C. § 506(a) or obtain a lien strip through a completed plan. Rather, the Debtors sought and obtained an order avoiding Creditors lien, irrespective of whether the Chapter 13 Plan was ever completed. A reading of 11 U.S.C. § 548(f)(1)(B) shows that it applies to situation where two conjunctive conditions are met, valuations of property and allowed secured claims. The valuation of property which secures a claim is a necessary determination of a secured claim pursuant to 11 U.S.C. § 506(a), which instructs the court the methodology for determining the value of a secured claim (emphasis added),

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

The Ninth Circuit Court of Appeals addressed the issue of the effect of a valuation of property and allowed secured claim pursuant to 11 U.S.C. § 506(a) in *Gold Coast Asset Acquisition, L.P. v. 1441 Veteran Street Co. (In re 1441 Veteran Street Co.)*, 144 F.3d 1288 (9th Cir. 1998). In holding that a § 506(a) valuation was binding only to the extent of the purpose for which it was made, the court stated,

> Section 506(a) operates to bifurcate a secured creditor's allowed claim into secured and unsecured interests based upon the bankruptcy court's valuation of the secured property. See *Dewsnup*, 112 S. Ct. at 777. A valuation under section 506(a), however, appears to be linked to its identified purpose - e.g., a plan of reorganization. Section 506(a) instructs the bankruptcy court to value the property

> "in light of the purpose of the valuation and of the proposed disposition or use of such property." 11 U.S.C. § 506(a); see *In re Madera Farms Partnership*, 66 B.R. 100, 104 (BAP 9th Cir. 1986) ("The need to look at the purpose of the valuation appears to have achieved virtually universal acceptance."). It follows that when the purpose behind a particular valuation no longer exists, that valuation becomes irrelevant.
> ...
> In the present case, the bankruptcy court valued the Property in light of Veteran's proposed plan of reorganization. Since the bankruptcy court rejected the plan, the valuation of the Property served no purpose under the Bankruptcy Code. Therefore, the valuation should not affect Gold Coast's rights to post-petition rents under section 552.

Id., 1291-1292. This is consistent with 11 U.S.C. § 548(f)(1) applying to the valuation of property and secured claims, as required by 11 U.S.C. § 506(a).

The order on the prior motion to avoid lien does not value the secured claim in the case, but limits the reach of the judgment lien in, during, and after this bankruptcy case. While such a determination may sound similar to a valuation under § 506(a), the relief granted and order avoid lien is a determination of the substantive real property rights of Creditors irrespective of what they are paid on their secured claim in the bankruptcy case.

A judgment FN.2., when rendered on the merits, constitutes an absolute bar to a subsequent attempting to re-litigate the matters determined by the judgment. *Cromwell v. County of Sacramento*, 94 U.S. 351 (1876).

Central to this claims preclusion doctrine or the concepts of merger and bar. The concept of merger holds that when a plaintiff succeeds in litigation and recovers a valid and final personal judgment, the plaintiffs claim is merged into the judgment, and the original claim and all defenses to it, whether asserted or not, are extinguished. The plaintiffs rights and the defendants liabilities are thereafter determined by the judgment. If the plaintiff loses the litigation, the resultant judgment acts as a bar to any further actions by the plaintiff on the same claim, with certain limited exceptions. By definition, merger and bar prohibit claim-splitting. All facts, allegations, and legal theories which support a particular claim, as well as all possible remedies and defenses, must be presented in one action or are lost (see §§ 131.20-131.24).

Moores Federal Practice, Third Edition, § 131.01. The Ninth Circuit Court of Appeals addressed the application of this

> principal to orders in bankruptcy court (an order approving the sale of property) in Robertson v. Isomedix, Inc. (In re International Nutronics), 28 F.3d 965 (9th Cir. 1993), cert. denied 513 U.S. 2016 (1994).
> ---
> FN.2. Federal Rules of Bankruptcy Procedure 9001 and 9002 defines the term Judgment to mean any appealable order and include any order appealable to an appellate court. The order avoiding the judgment lien issued by the court previously in this case could have been appealed to an appellate court.
> ---
> The court having entered a final order avoiding Creditors judgment lien, it cannot now be relitigated by Debtors. There remains no case or controversy for this court to exercise federal court jurisdiction, all such claims having been merged into the prior final order.

Civil Minutes, Dckt. 271.

Judicial Estoppel

The court finds that the equitable doctrine of Judicial estoppel encompasses this very situation. The court must preserve the integrity of the judicial process, and Debtors clearly are attempting to abuse the process by filing a sham Chapter 13 plan and avoiding the lien of the Christensen. Debtors filed this bankruptcy after the dismissal of the prior bankruptcy, admitting that they would be able to reap the benefit of a higher homestead exemption if they were to refile. Bankr. E.D. No. 09-35065, Civil Minutes, Dckt. 214. The Debtors are not entitled to reap the benefits of an increased exemption and therefore avoiding more of the Creditor's lien based on their prior bad faith.

While the Debtor attempt to disengage the current bankruptcy filing from their prior case, and their conduct in that case, the federal courts are not so nearsighted. The Debtors intentionally and willfully misrepresented to this court the terms of their Chapter 13 Plan. The court relied on their statements under penalty of perjury in confirming the Chapter 13 Plan in the prior case. Through their misrepresentations, the Debtors management to confirm a plan and exhaust four years of judicial time and resources. This Chapter 13 case is one more step by the Debtors in their plan to delay, abuse (both the Creditors and the court), avoid performing, not following through with the obligations of a Chapter 13 debtor, and taking what they want, when they want it.

These Debtors willfully and intentionally abused the Bankruptcy Code in the prior case, breached the order confirming the Chapter 13 Plan and failed to comply with the Chapter 13 Plan for the marketing and sale of the property which secures the Christensen claim. Through misrepresentation and intentional delay, while having committed to pay Christensen several years ago, the Debtors have hung on to the property gambling on a rising real estate market. It further appears, and the court so concludes, that the Debtors intentionally misrepresented the plan in the prior case, misrepresented that they would prosecute the plan to sell this Property that

secures the Christensen claim, and then sought to dismiss the prior case as part of a strategy to not only gamble on the real estate market, but obtain a higher exemption due to the passage of time.

The Debtors' strategy was to not perform the Chapter 13 Plan in the prior case, going as far (or doing so little) as not engaging an active real estate broker to market and sell the property necessary to fund their Chapter 13 Plan. When caught in their deception, the Debtor and their counsel feigned ignorance that they were required to hire a broker and sell the property – notwithstanding the express term stated in the order confirming the Plan which was prepared by Debtors' counsel.

The Debtors, now are not satisfied with the arguments they made, the positions they took, the rulings made by the court after an evidentiary hearing, and the relief they obtained in the prior evidentiary hearing and bankruptcy case. They want to relitigate the issues, putting the court and Creditor to more cost and expense. Quite likely, if they do not like the result from a new evidentiary hearing, the Debtors will just file another case and re-relitigate the matter.

It is proper for the court to apply judicial estoppel to the Debtors in their repeated quest to abuse the Bankruptcy Code and federal judicial process. The Debtors' strategy of repeatedly litigating the issue in a series of bankruptcy cases, changing what they want puts the Debtors at an unfair advantage to the Christensen.

CHAPTER 13 PLAN IN THIS CASE

The Debtors defaulted, intentionally, in the prior Chapter 13 case as part of their strategy to abuse the Bankruptcy Code, creditors, and the federal judicial process. They did not, and now appears could not, in good faith prosecute a Chapter 13 Plan. Dckt. 5. The same questionable issues arise in the present case.

The Debtors admit that they have no income with which to fund a plan. Debtors' household income totals $1,466.40 and of that amount $50 is received by Bun Auyeung from Social Security, $866.40 is received by Soo Tse from Social Security and the balance $550 is provided by "assistance from daughter." Schedule I, Dckt.1, page 29. Rather than a good faith plan being funded by the Debtors, some other family members appear to be pulling the strings, quite possibly for their own financial advantage. The Debtors appear to be the poor sacrificial lambs who are being deprived of their homestead exemption while other family members appear to be lining their pockets with future gain.

Debtors Do Not Qualify as Chapter 13 Debtors

The court notes that under 11 U.S.C. § 109(e), only an individual with regular income . . . may be a debtor under chapter 13 of this title. The phrase individual with regular income is defined in section 101 of the Code to mean an individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title. Many courts have held that gifts do not meet the statutory requirement for a Chapter 13 Debtor to have regular income. *In re Iacovoni*,

2 B.R. 256, 260 (Bankr. Utah 1980) (must be regular income from some source, even if welfare, pensions, or investment income); *In re McGowan*, 24 B.R. 73, 74 (Bankr. N.D. Ohio 1982); *In re Campbell*, 38 B.R. 193 (Bankr. ED NY 1984); *In re Cregut*, 69 B.R. 21, 22-23 (Bankr. Ariz 1986).

See also Tenney v. Terry, (In re Terry), 630 F.2d 634, 635 (8th Cir. 1980) (We think that § 101(24) contemplates that a debtor make payments, and that the debtor's income sufficiently exceeds his expenses so that he can maintain a payment schedule. The key statutory language is "make payments." The debtors in this case have no excess income out of which to "make payments," and therefore, they are not eligible for Chapter 13 relief under § 109(e).); *In re Welsh*, 2003 Bankr. LEXIS 2246 (Bankr. Idaho 2003) (Most courts have concluded that neither § 101(30) nor § 1325(a)(6) can be satisfied by gratuitous or volunteered contributions by nondebtor third parties. *See, e.g., In re Jordan*, 226 B.R. 117, 119-20 (Bankr. D. Mont. 1998); *In re Williams*, No. 97-08824-W, 1998 WL 2016786 (Bankr. D. S.C. Jan. 13, 1998); see also 2 L. King, Collier on Bankruptcy P 101.30[4], p. 101-97 (rev. 15th ed. 2002).).

The Debtors admit that they have not regular monthly income sufficient to fund a plan. Rather, instead of a good faith plan being funded by the Debtors, some other family members appear to be pulling the strings, quite possibly for their own financial advantage. The Debtors appear to be the poor sacrificial lambs who are being deprived of their homestead exemption while other family members appear to be lining their pockets with future gain.

The Debtors will be able to fund only $3,600.00 of the required $16,600.00 require plan payments. First Amended Plan, Dckt. 102. Thus, 78% of the plan must be funded with gifts – not the Debtors' regular income. The Debtors are not individuals with regular monthly income to fund a plan. 11 U.S.C. § 109(e). Rather, they appear to be individuals who are being used for others to "buy" a Chapter 13 Plan through the Debtors.

The Debtors do not quality as Chapter 13 Debtors as required by 11 U.S.C. § 109(e).

The Chapter 13 Plan Was Not Proposed or Prosecuted in Good Faith

As addressed above, the Debtors do not meet the minimum qualifications to be Chapter 13 Debtors. They do not have regular monthly income with which to fund a Chapter 13 Plan. Instead others are funding a Plan solely for the purpose of stripping the judgment lien of Barton and Paula Christensen even more than was previously done in the Debtors' prior Chapter 13 case which was converted to Chapter 7.

This Chapter 13 Plan is not in good faith and is merely a disguised repeat Chapter 7 liquidation filed solely for the purposes of decreasing the lien claim of the Christensen.

Second, no creditor with general unsecured claims have come forward to file proofs of claim. Quite possibly the "unsecured claims" do not exist or have been manufactured by the Debtors and Counsel to create the illusion that there is some purpose for this bankruptcy case other than to try and

circumvent the prior orders of this court and further abuse the federal judicial process. The Claim Bar Date expired on December 26, 2013. Notice of Chapter 13 Bankruptcy Case, Dckt. 9.

In reviewing the Schedules filed by the Debtors under penalty of perjury, the court notes the following:

1. Debtors' personal property consists of $70.00 in cash and bank accounts, $450.00 in household goods and effect, $25.00 in clothing, and nothing else.

2. On Schedule I the Debtors list only $916.40 in Social Security Benefits, plus an additional $550.00 a month in assistance from a Daughter.

3. The Debtors' expenses shown on Schedule J are $1,365.00 a month. To achieve this number the Debtors state, under penalty of perjury, that they spend only $250.00 a month on food, $2.00 on home maintenance, $9.00 on clothing, $100.00 on transportation, and $323.00 on auto insurance (though no car is listed on Schedule B and the Debtors state under penalty of perjury that they have no interest in any automobiles).

Schedules, Dckt.1.

Interestingly, when the prior case was converted to one under Chapter 7, the Debtors stated that Bun Auyeung alone had $2,200.00 a month in pension and retirement income. Chapter 7 Statement of Income, Dckt. 222.

The court has coined a phrase over the years concerning Debtors who "creatively" state under penalty of perjury their expenses on Schedule J or in declarations to create the appearance that a plan could be feasible – "Liar Declarations." A practice developed among the consumer bar to accede to their clients desire to retain some asset that they would let the Debtors lie about expenses because, "the client wants to give it a try, no matter how financially irrational or irresponsible." Judges throughout the District, once learning of the consumer attorneys allowing such "Liar Declarations," have acted to require the truthful, honest statements by parties under penalty of penalty of perjury. There is no "bonus for lying" in the Eastern District of California."

From a review of the Schedules, it appears that the Debtors are engaging in such "Liar Declarations" as to both their income and expenses. Possibly they are getting more assistance from their children. Maybe they have undisclosed assets and income. The court does not know, but it is obvious from Schedules I and J that the numbers don't add up.

It may be that whomever is pulling the financial strings, and has set in forth a pattern which has worked to deprive the Debtors of their homestead exemption for almost five years now (from the time they could have sold their home in the prior case) from receiving the financial benefits of that money than living in what, if Schedules I and J are taken as true, being forced to live in abject poverty with barely the shirt on their back

and little food to eat.

Third, in April 2012, the court granted judgment for the Debtors in the amount of $15,259.95 (of which $3,900.00 was for legal fees) against Christensen. Judgment, 10-2497 Dckt. 72. Though presumably collected, this $15,259.95 is not otherwise accounted for by these Debtors who present themselves as qualified Chapter 13 Debtors. Possibly these monies were taken from the Debtors by those who are calling the financial shots and looking to invest $13,000.00 to take even more through the Debtors' homestead exemption.

This is a very sad state of affairs, which may very well warrant inquiry on many fronts concern the possible abuse of these Debtors. The court reviewed the photos of the home in the appraisal provided by the Debtors. It appears there are severe habitability issues.

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 Motion to Avoid Judicial Lien is denied.

15. 12-38821-E-13 EJS-2 | **FRANCIS VOGEL AND ROXANNA SPRAGUE** | **MOTION TO MODIFY PLAN 6-12-14 [42]**
Eric John Schwab

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtors' plan may not be the Debtors' best effort or proposed in good faith because Schedule J reports on line 4d Homeowners Association dues of $368, while the Debtors stated that the dues were $250 monthly.

The Trustee opposes confirmation offering evidence that the Debtor is $9,465.00 delinquent in plan payments under the confirmed plan. Trustee states that the Debtors have not explained why the became delinquent and how the funds were used. Debtor has paid $1,556.00 per month since August 2013, rather than the $2,275.00 called for by the confirmed plan, which is a $719.00 per month difference. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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

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

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

16. 14-20321-E-13 NLE-1 — DWIGHT BROWN — W. Scott de Bie — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK — 2-20-14 [19]

CONT. FROM 6-24-14, 3-25-14

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 20, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to July 29, 2014 at 3:00 p.m.

The Chapter 13 Trustee ("Trustee") opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value Collateral. According to the Trustee, Debtor proposes to value the secured claim of ResMae Mortgage Corp in Class 2 but has not filed a Motion to Value Collateral. Accordingly, the Trustee believes that Debtor cannot make plan payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

Debtor's opposition

In his opposition, Debtor alleges that he has filed a Motion to Value Collateral on February 24, 2014. The hearing on the Motion is scheduled for March 25, 2014. According to Debtor, he delayed in filing the Motion because he was unable to determine the correct creditor due to conflicting information.

DISCUSSION

The court has denied the Debtors' Motion to Value the secured claim of "ResMae Mortgage Corporation." It appears that ResMae Mortgage Corporation has been liquidated through a Chapter 11 case in Delaware and no longer exists. See March 25, 2014 Civil Minutes for court's ruling on Motion to Value, DCN: SDB-1.

The court continued the Motion to Value for Debtor to properly identify and serve the correct Creditor.

Debtor filed an Ex Parte Motion for Examination in order to determine the creditor for the Motion to Value secured claim.

CONTINUANCE

The court denied the Motion to Value Claim of ResMae Mortgage, as Debtor filed a new Motion to Value of Dreambuilders Investments, LLC, regarding the second deed of trust.

The objection is continued to 3:00 p.m. on July 29, 2014 to be heard in conjunction with the Motion to Value.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that hearing on the Objection to confirmation is continued to 3:00 p.m. on July 29, 2014.

17. 14-20321-E-13 DWIGHT BROWN
SDB-1 W. Scott de Bie

CONTINUED MOTION TO VALUE COLLATERAL OF RESMAE MORTGAGE CORPORATION
2-24-14 [23]

CONT. FROM 3-25-14

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 24, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny without prejudice the Motion to Value.

JULY 22, 2014 HEARING

The court reviewed the docket and discovered a new Motion to Value has been filed naming Dreambuilders Investments, LLC regarding the second deed of trust on the property commonly known as 525 Carousel Drive, Vallejo, California. Therefore, this motion to value the second deed of trust of Resmae Mortgage, LLC is denied as moot.

PRIOR HEARINGS

Service Issues

The court has not been able to determine that service at the various addresses listed on the Proof of Service complies with Federal Rule of Bankruptcy Procedure 7004 and 9014. A search of the California Secretary of State's Business Search, and Delaware Corporation Entity Search, do not provide any results for ResMae Mortgage Corporation.

The Certificate of Services does not state how the Brea, California address used for the identified creditor. The court cannot identify how effective service was made for this Contested Matter.

The court did find using the California Secretary of State website the following information for corporations with the word "ResMae" in their names:

A. ResMae Financial Corporation

1. Status......Forfeited

2. Address.......6 Pointe Dr, Brea, California

3. Agent for Service......Steve Glouberman

a. 6 Pointe Dr., Brea, California

B. ResMae Service Corporation

1. Status......Dissolved

2. Address.......2601 Saturn St Suite 101, Brea California

3. Agent for Service......Steven Glouberman

a. Address....1925 Century Part East Suite 500, Los Angeles, California.

http://kepler.sos.ca.gov/

The court has also looked up an entity with the name ResMae Mortgage Corporation using the Lexis Nexis data bases. The information includes the following:

A. Liquidating Trust of ResMae Mortgage Corporation

1. Chapter 11 case No. 07-10177
2. Date filed.....February 2, 2007.
3. Filing Jurisdiction......Delaware
4. Attorney for Debtor.....Douglas D. Herrman, Wilmington, Delaware.

B. ResMae Mortgage Corporation

1. State of Incorporation......Delaware
2. Status.......Forfeited
3. Agent for Service of Process.....CAC-Lawyers Incorporating Service, 11 E Chase Street, Baltimore, Maryland 21202-2516

C. More than 40 judgments and liens issued against ResMae Mortgage Corporation.

In conducting a general internet search (using the Bing search engine) the court identified an article in Bloomberg Businessweek which provides the following information:

"Bridgefield Mortgage Corporation provides mortgage services. Its services include free faxes, verification of mortgage, loan history, document request, name change,

amortization schedule, insurance substitution, duplicate year-end statement, cancelled check copy, loan reanalysis, and Web payment. The company was formerly known as ResMAE Mortgage Corp. and changed its name to Bridgefield Mortgage Corporation in February 2010. The company was founded in 2001 and is based in Overland Park, Kansas. Bridgefield Mortgage Corporation is a former subsidiary of ResMAE Financial Corporation."

7101 College Boulevard

Suite 1400

Overland Park, KS 66210

United States
Founded in 2001
Phone:
913-661-8728

Founded in 2001"

http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=12072067. While the court does not take the above as credible, properly authenticated evidence, it is a thread which the Debtors could have followed in figuring out who the creditor is in this case. Bridgefield Mortgage Corporation is registered with the California Secretary of State, listing CT Corporation Service as its agent for service of process.

The court continued the hearing to allow the Debtor to name and serve the proper creditor.

On April 30, 2014, the court granted an ex parte Motion for Examination, in which the Debtor is seeking to discover the identity of the creditor.

Nothing has been filed to date. The court continued the hearing approximately 30 days to allow Debtor to further determine the identity of the creditor.

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 Value 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 Value is denied without prejudice.

18. 12-26623-E-13 NAVRAJ/INDU JASUJA — MOTION TO MODIFY PLAN
PGM-8 Peter G. Macaluso — 6-17-14 [162]

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

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

Below is the court's tentative ruling.

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

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The terms of the proposed Modified Plan (Dckt. 116) are:

A. Plan Payments by Debtors totaling $18,980.00 through May 2014.

B. Plan Payments by Debtors of $550.00 a month for thirty-five months.

C. Plan Term of sixty months.

D. Debtor's counsel to be paid (subject to court approval) $2,500.00 through the Chapter 13 Plan.

E. Administrative expenses of $495.00 a month. [If accurate, then only $55.00 a month of the plan payment would be available to be disbursed for claims.]

F. Class 1 Claims.....None

G. Class 2 Claims

1. Sacramento County, Prop. Taxes.....None (paid)

2. RC Willey Fin. Svg.....None (paid)

3. U.S. Bank - 2nd DOT.....$0.00

H. Class 3.....None

I. Class 4 Direct Payment by Debtors

1. Bank of America - 1st DOT.....$1,387.96

2. Bank of America - 1st DOT (w/arrears).....$1,387.00

3. Santander Con. USA (paid by third party)...$ 444.08

J. Class 5 Priority

1. EDD.....$172.53

2.

K. Class 6 Designated Unsecured Claims.....None

L. General Unsecured Claims

1. 5.8% Dividend on $285,118.63 ($16,536.88 aggregate dividend)

a. Per Month.....$275.61 (60 months)

b. Per Month.....$472.48 (35 Months)

Fourth Modified Plan, Dckt. 166. In light of prior plans providing for only a nominal dividend for creditors holding general unsecured claims (1.8% in the confirmed First Amended Plan, proposed First Modified Chapter 13 Plan, and the proposed Second Modified Chapter 13 Plan, Dckts. 21,89, 105), it appears that the 5.8% dividend must be funded in the remaining 35 months of the plan, necessitating $472.48 a month going to creditors holding general unsecured claims.

TRUSTEE'S OBJECTION

Upon review of the proposed plan and the existing record, the Trustee recommends approval of the modified plan, provided that the treatment of the RC Willey Financial Services is changed to class 4 (instead

of listed as a Class 2 claim with monthly dividend as "paid") and that attorney fees in the plan are limited to the $3,500.00 provided in the plan (which the trustee has already paid).

The Trustee notes several issues:

1. Commercial Lease: Section 3.02 of Debtor's modified plan includes a commercial lease with a regular monthly payment of $2,400.00. Debtor's Declaration states, "We will also continue lease payments for the commercial lease." Debtor did not file updated income and expense statements, but Debtor's prior Schedule Js do not budget for lease payments. Debtors sold their business inventory without Court authorization and are no longer in business, so that the Trustee believes the lease is no longer held by the Debtor; but the First Amended Plan provided for the lease, and was confirmed so the lease was already assumed. While the better procedure may have been to add additional provisions to reflect the history, where the lease has been assumed and where the Debtor no longer holds the lease, the Trustee does not believe it prejudices the rights of the Debtor subject party, or of creditors.

2. Amended Schedules I and J. The Debtor has not filed amended Schedules I and J in support of the proposed plan payment of $550.00. Debtor's prior Schedules filed on December 10, 2013 support a plan payment of $526.08. Debtor's prior Schedule J provides for a mortgage payment of $1,527.00, when creditor, Bank of America's proof of claim (Court Claim #26) states Debtor has a fixed interest loan of 5.250% with principal and interest payments of $1,387.96, a difference of $139.04. Debtor's Schedules show they have two children, ages 14 & 17, that one works for the post office for the last 15 years and the other works for "Immuno Concepts" in sales for the last two years. Debtor claims various deductions and expenses, which include items that are matters of discretion, (such as retirement contributions), and based on a review of the Debtor's records, the Trustee believes the Debtor can afford the proposed payments.

3. Taxes: The Trustee has reviewed the tax returns of the Debtor for 2012 and 2013 which show a total refund in 2012 of $2,549.00 state, $5,800.00 federal, and $2,729.00 state, and $6,881.00 federal, in 2013. The Debtor has had an average tax refund each year of $8,979.50.

4. Monthly Dividend for Class 2 RC Wiley Financial Services: Debtor's modified plan proposes to provide for RC Willey Financial Services in Class 2. Creditor filed a proof of claim on May 7, 2012 (Court Claim #8) for $7,982.54, of which $5,627.00 is claimed as secured and $2,355.54 unsecured. While Debtor now provides for this claim in Class 2, the monthly dividend is stated as "Paid" when no disbursements have been made to this creditor, effectively not providing for this creditor so the debt will not be discharged.

5. Percentage to Unsecured: Section 2.15 of Debtor's modified plan proposes a dividend to unsecured creditors of no less than 5.8%. The Trustee calculates that unsecured creditors will receive up to 10%, without factoring in all future tax returns that are to be paid into the plan. Where this case is past the bar date for filing timely claims, the Trustee does not oppose the modified plan percentage as a minimum.

Trustee also states that the Debtor is proposing to pay in substantial additional amounts into the plan for the benefit of unsecured claims. The reason that the good faith in proposing the plan is being questioned is because of the sale of the Debtor's business property without Court approval, and the continued inability of the Debtor to obtain approval of the sale either directly or by means of a modified plan. Trustee concludes that the proposed modified plan will remedy the situation.

Trustee states that previously either the Debtor's Attorney was not receiving accurate information from the Debtor, in which case the Debtor's Attorney still had a duty to verify the accuracy of the pleadings submitted, or the Debtor's Attorney was not asking for the necessary information in a timely fashion and presenting it to the Court.

In this case the Debtor sold their business, a restaurant, as soon as they had a purchase offer. While the Debtor's Attorney made a motion to sell, he described the property incorrectly as real property. The second time he made the motion to sell he proposed to open an IRA with the proceeds, when the Trustee objected that the proposed sale would prevent plan payments. After the second sale motion was denied, no further sale motion was made, and a modified plan was proposed where the motion did not address the sale. The Debtor's Attorney stated that the sale did not occur, (DN # 94, Page 1, Lines 27-28, 7/28/2013.) The Debtor stated when attempting to confirm their second modified plan that the sale had occurred prior to October 30, 2012, (DN # 108, 1 0-12), and finally explained what happened in the Debtor's Declaration in Support of Opposition to the Trustee's Motion to Convert, that the sale had occurred before the first motion to sell was heard, although it incorrectly states that was the reason the sale was denied.

Trustee states that while the representation by the Debtor in the opposition to the motion to dismiss appears genuine, it does not explain why Debtor's attorney made prior representations that did not include these details: the first motion to sell proposed the sale of real property, the second motion to sell was made after the business was sold, the first two motions to modify did not directly address the sale, and the first motion to modify after the Trustee's Motion to Convert did not directly address the sale.

Trustee also notes that if necessary, Debtor be afforded the opportunity to address the prior ruling in this matter at an evidentiary hearing if the court deems appropriate.

DEBTOR'S REPLY

Counsel for Debtor submitted a reply, clarifying that the commercial lease ended around the time of the sale and no payments are due as to the lease. Counsel states that the different of the plan payment and the disposable income can be remedied with an amended Schedule J lessening the recreation expense for the family. Counsel agrees that RC Willey claim can be moved to Class 4 and that the percentage to unsecured claims can be corrected in the order confirming. Counsel states he will be seeking fees in the amount of $2,500 and therefore, does not agree with the restriction suggested by the Trustee to limit Counsel to the fees already set forth in the plan and paid.

DISCUSSION

Case History

The court has addressed the conduct of the Debtors, as the fiduciaries to the Bankruptcy Estate, in selling property of the estate. The first motion to sell was filed on August 14, 2012, Dckt. 46. That motion was denied without prejudice. Order, Dckt. 61. In denying the Motion, the court stated,

> "The Chapter 13 Trustee objects to the sale of the real property since the real property is not listed on Schedule A. The Debtors disclose on the Statement of Financial Affairs that they operate a business at 7467 Village Parkway in Dublin, but they do not claim an ownership interest. Debtors do no disclose any executory contracts or unexpired lease on Schedule G.
>
> Debtors admit in their reply that they do not seek to sell the real property, but the business operated at the real property. The motion, however, it quite clear as to the relief Debtors seek. As the sale is not in the ordinary course of business, all creditors are entitled to notice. Fed. R. Bankr. P. 2002(a)(2). In this case, creditors have notice that the Debtor seeks to sell the real property. They do not have notice that the Debtor instead seeks to sell the business located the real property.
>
> This Motion is fatally defective as it does not identify the property to be sold. The Notice of Hearing is fatally defective because it misidentifies the property being sold. If the Debtors wish to sell their business and the personal property of the business then they may file a motion to sell those personal property assets, with that motion actually identifying what is to be sold (and not merely generically describing the assets as business and inventory."

Civil Minutes, Dckt. 59.

The Debtors then quickly returned with a second motion to sell. Motion, Dckt. 62. That motion was denied. Order, Dckt. 77. Again, the court had significant problems with the Debtors' credibility and good faith.

"The undisclosed assets, the multiple amended Schedules, and the failure to disclose payment of property taxes on the eve of bankruptcy significantly impair the Debtors' credibility. The Debtors state under penalty of perjury in the Schedules that the business only has a liquidation value of $12,000.00 and no goodwill value. For the current sale, the value has risen sufficient to sell it for $20,000.00, with the buyer paying $3,000.00 for goodwill. Not coincidently, the additional values are just enough to pay what the Debtors identify as sale expenses so that they can claim a new exemption in the remaining net proceeds of just less than $12,000.00 (the amount of the exemption claimed in the business, including the tools of the trade exemption).

The testimony and Purchase Agreement provided to the court is devoid on any information as to the purported $5,735.00 costs of sale and the $3,000.00 in purported taxes. Fortunately, from the Debtors' perspective, this works out to be exactly the number of expenses and taxes so that the remaining net proceeds can be within the re-reamended exemption amounts previously stated by the Debtors. The court does not find the Debtors' testimony as to the expenses and taxes to be credible.

The court will not approve a sale which purports to authorize the payment of unidentified expenses and taxes. Further, the court will not approve a sale that may purport to authorize the Debtors to claim the proceeds as exempt. The Debtors have filed a blizzard of amended schedules, including amended exemptions. Further, the amended schedules have disclosed cash accounts for which no plausible explanation has been provided for the failure to disclose when the case was filed or earlier in these proceedings.

Finally, the court has no idea what assets are being sold. The motion sees [sic.] to sell generically described assets consisting of "business inventory, equipment and goodwill located in the property commonly known as 7467-69 Village Parkway, Dublin, California." Dckt. 62. The court has no idea if the inventory consists of two boxes of salt, three chickens, and a bottle of pepper, or a freezer full of food to prepare a banquet for 200 persons. Additionally, the equipment could consist of a one burner stove, hot plate, to pans, and a spatula, or may be a 14 burner Wolf stove, six oven, three walk in freezers, three stainless steel work tables with built in sinks and disposals.

The Business Purchase Agreement states that a list of the equipment being sold is attached, but that disclosure has been omitted from the Exhibit A filed with the court. Dckt. 65. Further, though not disclosed in the Motion, the Business Purchase Agreement allocates $2,000.00 for the Debtors and estate not to compete within 5 miles of the Dublin,

California location of the business being sold.

> The court cannot issue an order which effectively states that the Debtors may sell the "Stuff" used in the business. That is what has been requested by the Debtors. The court also will not approve a sale and blindly parrot purported expenses merely because the Debtors say that such expenses exist."

Civil Minutes, Dckt. 75.

With no order from the court, the Debtors, in their fiduciary capacity, took property of the bankruptcy estate and disposed of it.

At the hearing on the objection to claim of exemption the court recalls stating that these Debtors clearly have the ability to immediately put the $20,000.00 they improperly took, back into the estate.

> The court is very surprised that, after hearing the court's comments at the prior hearing and reading the ruling, the Debtors have not come forward providing for the $20,000.00 of ill gotten gain to be paid into the plan. The breach of fiduciary duty is not a mere "technicality" or "faux truth" that can be ignored. Converting property of a bankruptcy estate by a fiduciary raise substantial civil and criminal law issues.
>
> The Debtor clearly have the ability to place the $20,000.00 they improperly took and now claim as exempt back into the estate. But this appears to be the farthest thing from their mind, trying to nickel and dime the way out of their breach of fiduciary duty. This appear to be part of what may be a larger strategy to abuse the Bankruptcy Code, Estate, and creditors, hide assets, and steal as much as they can from the estate.
>
> The court finds that Debtors have acted in bad faith and therefore, sustains the Trustee's objection. The Debtors' exemptions claimed in the Restaurant business and assets is denied.

Civil Minutes, Dckt. 142.

Review of Proposed Plan

Debtor's Modified Plan proposes a plan payment of $18,980.00 total paid in through May 2014, then $550.00 for 35 months. Dckt. 166. Under the proposed modified plan Debtor will pay a total of $38,230.00 throughout the life of the plan (18,980.00 + $19,250.00 ($550.00 x 35)). To comply with the Court's order, Debtor would need to pay over the life of the plan a total of $36,800.00. The Debtor's proposed plan payments totaling $38,230.00 complies with the Court's order.

Debtors state they are **now willing to pay** the proceeds of the sale

back to the Chapter 13 estate over the remaining months of the plan, increasing the plan payments to $550.00 for the remainder of the plan. However, the court is not satisfied with this treatment. The "now that you've caught me I'll pay some money back" does not comply with the Bankruptcy Code or the Debtors' fiduciary duties.

Recently discussed by the Ninth Circuit Court of Appeals in *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120 (9th Cir. 2013),

> the bankruptcy court noted that it "reviews the totality of the circumstances to determine whether a plan has been proposed in good faith." The bankruptcy court observed that, in *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999), we had looked to four factors to determine whether a plan had been proposed in good faith: "(1) whether debtors misrepresented facts in their plan or unfairly manipulated the [Bankruptcy] Code, (2) the debtors' history of filings and dismissals, (3) whether the debtors intended to defeat state court litigation, and (4) whether egregious behavior is present."

Id. at 1123. Under the totality of the circumstances, the actions by the Debtor in selling their business, not only without approval but after two attempted motions to sell that were denied, the subsequent non-disclosure to the court and the parties, and the failure to provide credible testimony in support of the proposed plan, the court finds that the Debtors did not propose the plan in good faith pursuant to 11 U.S.C. § 1325(a)(3).

Having been caught with their "hands in the cookie jar," the Debtors and their counsel had an opportunity to address the breach of their fiduciary duties and diversion of estate assets. They chose not to do so. Additionally, the Debtors, as fiduciaries of the estate have done nothing to recover the assets, or value of the assets, which were sold by them to third parties.

The court has previously addressed with the Debtors and their counsel the court's "displeasure" with the Debtors having not only sold property of the estate knowing that they had no such authority, but having diverted ("stolen") the monies from the bankruptcy estate. Under the confirmed plan in this case the Debtors are already obligated to make monthly payments of $280.00. On top of that, there was an additional $20,000.00 which has been diverted by the Debtors outside the plan. For 35 months the Debtors want to increase the plan payments to $550.00 a month – a $170.00 a month increase.

By increasing the payments $175.00 a month for 35 months, the Debtors contend that they are "increasing" the monies for creditors by $6,125.00. That is far short of the $20,000.00 from the unauthorized sale which has been diverted by Debtors from the bankruptcy estate. In substance the Debtors' boldly state in the Plan that the court should reward them with $13,875.00 of diverted ("stolen") money and let them pay back over time, interest free, only $6,125.00. (The $20,000.00 of proceeds from the unauthorized sale is non-exempt property of the estate. Order, Dckt. 144.)

The court reviewed in detail the mis-dealings of the Debtors in denying without prejudice the Chapter 13 Trustee's motion to dismiss because of the Debtors' conduct. Civil Minutes, Dckt. 137. Those comments are equally applicable to the present situation. The court incorporates that Ruling into this decision. In denying the Motion, the court noted that it was not provided with sufficient evidence and analysis of whether the dismissal should be with or without prejudice, or if the case would be better converted to one under Chapter 7 for a Trustee to recover the estate's claims against the Debtors. Merely dismissing the case to allow the Debtors to cover up the diversion ("theft") of the $20,000.00 sounded more like relief sought by the Debtors than action being taken by the Chapter 13 Trustee or U.S. Trustee concerning the proper administration of cases and enforcement of the Bankruptcy Code.

Again the Debtors are not proposing or prosecuting a Chapter 13 Plan in good faith. See Civil Minutes for hearings denying confirmation of prior proposed Plan, Dckts. 96, 125, 158. In addition, these Debtors have been plagued with not identifying assets on their Schedules.

> "In addition to having $5,146.44 in theretofore undisclosed bank accounts in India, the Debtors have $9,534.47 value in life insurance, $6,640.00 in a $401K, $2,235.77 in stock, $12,001.91 in checking account (with the Debtors have elected to pay additional amounts from this account post-petition totaling $6,400.00 to creditors outside of a plan to be "current" on their house), and $57,000.00 in a TSP Retirement Account. The Debtors have amended their Schedules multiple times amending their assets finding and losing assets. Id. and Third Amended Schedule B, Dckt. 121."

Civil Minutes, Denying Motion to Confirm Plan, Dckt. 158.

The Debtors continue in their question to keep as much of the ill gotten gains as possible, avoid their breach of duty to the estate and conversion of estate assets, and slip by the court's and creditors an unconfirmable plan. FN.1.

FN.1. The problems for the Debtors continue to mount, a situation that they and their counsel well may not appreciate. When property is improperly taken from another a constructive trust or equitable lien may be imposed on other properties which were obtained with or used to pay down the debt secured by property of the wrongdoer. Such trusts and liens are not subject to the "normal" exemptions in assets which may be claimed. The Debtors appear oblivious to the significant risks they face in trying to nickle and dime away just paying $20,000.00 into the estate from their exempt assets for the assets improperly sold and the monies improperly diverted ("stolen") from the estate.

The proposed Third Modified Chapter 13 Plan does not comply with the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and is not confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied.

19. 14-23523-E-13 ASHOK CHAND — MOTION TO CONFIRM PLAN
AHL-1 Alexander H. Lubarsky — 5-29-14 [30]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

9014-1(g).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee opposes the plan on the basis that the proposed plan is not the Debtor's best effort. The Trustee states the Debtor's 2013 Federal Tax Return lists rents received in the amount of $14,990.00; as to 5244 Fitzwilliam Way Sacramento Ca 95829. Debtor's voluntary petition lists the above address as the debtors Street Address. Debtors Statement of Financial Affairs does not list any rental income received in 2013 and it is not known if the debtor is currently receiving any rental income, where Schedule I is silent as to any additional income.

Additionally, the Trustee states it is not clear if the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C.§ 1325(a)(6). Schedule I fails to list a 401K loan repayment expense. The Debtors pay advices lists a deduction for "401KLOAN" in the amount of $170.90 per pay period. This deduction was not listed on Schedule I.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

20. 14-24924-E-13 DPC-1 EKOW-YARTEL CUDJOE Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-18-14 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtor's best effort. The Debtor appears to be over the median income and propose plan payments of $799.00 per month for 60 months, with a 25% dividend to the unsecured creditors. Trustee states the Debtors gross income is listed on Schedule I in the amount of $7,588.00 ($5,638.00 monthly gross, $1,950.00 monthly overtime). The debtors Year to Date income according to the debtors pay advise Pay Period ending 04/14 $62,658.07 or $15,664.51 gross per month ($62,658.07/4). Schedule J, line #13 states that "Going forward Debtor will not be working as much over time as he has in the prior 6 months." It is not clear to the Trustee if the overtime the debtor has earned through April 2014 was mandatory overtime or

if the debtor can and has voluntarily reduced the amount of hours he works.

Additionally, the Trustee states the Pay stubs provided to him show that the debtor's deductions are as follows:

RETIREMENT $565.20
MEDICARE $ 75.38
FKAISER $392.19
FWESTRNDNT $44.94
CCPOA VIS $ 2.00
457PLAN $1300.00
PERSSURV $ 2.00
ROTH457 $300.00
DUES-CCPOA $79.87
PERS SUR AD $ 3.35

Trustee states that the debtor has a total of $2,165.02 allotted for retirement deductions, or approximately 38% of his gross income ($2165.02/$5638).

Trustee also states that Schedule I only lists $565.20 as Mandatory retirement (line #5b) and $450.00 on line #5c as Voluntary contributions. This differs by $1,149.82 from what is listed on his pay advices. ($2165.02-$565.20 -$450-.00 = $1149.82) Schedule I, line #5a lists the debtors tax, Medicare and Social Security deductions as $1,500.00. The pay advices reflect only Medicare in the amount of $75.38 as being deducted on a monthly basis. In fact, the pay advices reflect the debtors Tax Status for both Federal and State as "ExlvlP." Debtors counsel stated on record at the First Meeting of Creditors that he advised the debtor prior to filing to adjust his deductions and the debtor stated that he has not.

Furthermore, Trustee states Form B22C reflects monthly disposable income on line# 59 of -$46.90 but that the Debtor may have not properly completed the Form B22C. The Trustee objects to the income listed in Column A in the amount of $9,149.38. According to the Trustee's analysis of the debtors pay stubs provided to the Trustee it appears the income in Column A should be $10.417.37.

Expenses:
Line #57 (Special Circumstances) list the following items:
#57 a: $40.00 for Chapter 13 Attorney Fees Through Plan and
#57 b: $2,000.00 Estimated tax withholding (from monthly wages)

The Trustee does not believe the Chapter 13 Attorney Fees qualify as a special circumstance and the estimated tax withholding of $2,000.00 does not match the $1,500.00 listed on Schedule I line #5a. Trustee concludes that Form B22C line #59 should actually reflect a positive disposable income. The Trustee calculates the plan could pay as much as 100% to the unsecured creditors if the plan payment increased to $1,033.04 per month.

Lastly, Trustee states that Schedule B #12 lists State of California Retirement and Balance is estimated in the amount of $28,000.00. It does not appear the debtor has listed all of his assets correctly on Schedule B as

the debtors pay advices show deductions of $565.20 towards retirement, $1300.00 towards 457 Plan and $300.00 for the Roth 457.

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.

21. 13-35629-E-13 MARCIE ZAHOUREK — MOTION TO MODIFY PLAN
SJS-1 Scott J. Sagaria — 6-19-14 [26]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT 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 June 19, 2014. By the court's calculation, 33 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

NOTICE

Pursuant to Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 3015(g), 35 days notice is required for a Motion to Confirm a Modified Plan. By the court's calculation, 33 days' notice was provided. This is not sufficient.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee opposes the motion on the basis that the Debtor did not give adequate notice to creditors, as only 33 days notice was provided.

Furthermore, Trustee argues the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The debtor is delinquent $485.00 under the proposed plan. The debtor is delinquent $2,250.00 under the plan confirmed 2-13-14. The last payment posted by the Trustee was 3-4-14. The declaration filed by the debtor does not address the Notice of Default filed by the Trustee 5-15-14. The debtor is proposing to pay $485.00 monthly when she has been unable to pay $450.00 monthly in the past.

Trustee also notes that Schedule J filed 6-19-14 may not be accurate. The debtor reports rent expense to be $1,036.00 which is the same as reported at the time the petition was filed. The Trustee notes the debtor filed a change of address with the court on 6-19-14.

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

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

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

22. 10-46331-E-13 DPC-1 | ALEJANDRO/KERRI HOUSER
John David Maxey | CONTINUED DEBTORS' MOTION OBJECTING TO THE TRUSTEE'S NOTICE OF DEFAULT AND APPLICATION TO DISMISS CASE
2-6-14 [138]

CONT. FROM 6-3-14, 2-25-14

Tentative Ruling: The Notice of Default and Motion to Dismiss has been set for hearing pursuant to order of the court.

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

Below is the court's tentative ruling.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Internal Revenue Service, the United States Department of Justice, the Chapter 13 Trustee, and the Office of the United States Trustee on February 6, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

The Motion Objecting to the Trustee's Notice of Default and Application to Dismiss Case 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.

The court's decision is to xxxx the Debtors' Objection to Trustee's Notice of Default and Application to Dismiss Case.

JULY 22, 2014 HEARING

On July 8, 2014, the Trustee filed a response stating that the Debtors seek to prevent the motion to dismiss but do not proceed with a written settlement or offer to compromise with the IRS, nor has the IRS claim been withdrawn.

On July 9, 2014, the Debtors filed a Stipulation re Treatment of IRS Claim, Dckt. 152, in which Debtor agrees to entry of money judgment for the unpaid balance of the Trust Fund Recovery Penalties assessed against him and that they are excepted from bankruptcy discharge pursuant to 11 U.S.C. § 1328(a). The United States agrees that the IRS claim based on the Trust Fund Recovery Penalties will be paid outside the Chapter 13 plan.

Debtor also filed a Status Report stating that they have settled all claims with the IRS, providing for payment outside the Chapter 13 plan.

Debtors state that with this stipulation, Debtors have completed the plan and there is no plan default. Debtors request that the Objection be sustained and that the Chapter 13 Trustee proceed with the formalities of closing the case.

At the hearing, xxxx

JUNE 3, 2014 HEARING

The court continued the hearing to allow closure regarding the Internal Revenue Service Claim. On May 27, 2014, the Debtors filed a Status Report. Dckt. 145. It is reported that the Debtors and the Internal Revenue Service have settled the dispute and stipulated to a judgment and payment plan pursuant to an offer and compromise. The parties, as communicated by counsel for the Debtors, request that this hearing be continued for thirty days to allow the parties to finalize the documentation of the agreement.

PRIOR HEARING

Debtors filed an Amended Chapter 13 Plan on October 19, 2010. The Plan was confirmed on February 18, 2011. Order Confirming Amended Chapter 13 Plan, Dckt. No. 61. Debtors' first payment was made on November 22, 2010. The Amended Plan provides for payments of $275 per month for thirty-six (36) months. Debtors' last payment was due on October 25, 2013. Debtors have made all their plan payments.

In his Notice of Default and Application to Dismiss, Trustee asserts that as of January 14, 2014, Debtors are delinquent in the amount of $550. Dckt. No. 136. Debtors state, however, that they have made all payments required under the confirmed plan, and that they are not in default. Debtors assert that under the Notice of Default, the Trustee's own accounting shows that all of the necessary payments have been made, with the last payment having been posted on October 23, 2013 Dckt. No. 146 at 2-3.

Debtors explain that all claims have been paid, as indicated by the "Trustee's Claim Summary." There is one claim, however, that remains in dispute. Debtors have requested that the Internal Revenue Service withdraw its proof of claim because it is currently the subject of litigation in district court. Debtor's Attorney has been representing Joint Debtor Alejandro Vince Houser in the district court litigation entitled *United States of America, IRS v. Alejandro Vince Houser*, DC No.: 2:11-cv-02062-KJM-AC, for the past two years. Debtors state that they are still negotiating an offer to compromise with the Internal Revenue Service, and are engaged in the discovery stage of the district court matter.

Counsel for Debtors state that his firm has made substantial efforts to settle the case, including attending settlement conferences and assembling offers to compromise with the Internal Revenue Service. Counsel states that there was a formal settlement offer submitted to the Internal Revenue Service, which rejected in January 2013. Debtors' Counsel was invited to submit an amended offer if it would address the concerns raised by the Internal Revenue Service.

As of February 6, 2014, the offer is still under consideration by the Internal Revenue Service. The Motion states that counsel for the parties have been in active and regular communications to achieve a settlement, and are engaging in good faith efforts to resolve the matter. Debtor's Counsel believes there is substantial likelihood of settlement; Debtor has agreed to entry of a judgment in full, subject to the terms of a payment plan. The unresolved issues in this compromise concern the amount of the lump sum payment, and the payment plan duration. Upon settlement, Counsel believes that the Internal Revenue Service will withdraw its claim and agree not to object to discharge.

If the Internal Revenue Service Proof of Claim is withdrawn, the alleged defect in the plan would be cured and Counsel believes the Chapter 13 Trustee would have no grounds to base his Motion to Dismiss. Debtors request that the case not be dismissed and that the Chapter 13 Trustee agree to defer a request for dismissal of the case for at least ninety days to allow the parties to resolve the issue of the Internal Revenue Service claim.

Trustee's Notice of Default and Application to Dismiss, DPC-1, was issued on the basis of Trustee's assertion that Debtors have failed to make all of the payments due under the plan. Trustee states,

> Debtor has failed to make all payments due under the plan. As of January 14, 2014, payments are delinquent in the amount of $550.00. Additional payment of $275.00 will become due on January 25, 2014. Therefore, a total amount of $825.00 will be due within 30 days from the date of the service of notice. Dckt. No. 136.

Debtors offer the Trustee's Account Ledger to show that Debtors have made all the requisite payments under their Chapter 13 Plan. The court notes that this document is not filed as an Exhibit, but rather an attachment to the Declaration of Counsel for the Debtors. Dckt. No. 140. Debtors are advised that Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that the motion, points and authorities, each declaration, and the exhibits document to be filed as separate electronic documents. The court will proceed, however, to consider the attached Account Ledger. Debtors also attach a Claim Summary on their bankruptcy case, purportedly showing that all of their claims have been paid off. Debtors state that the Trustee's Account Ledger shows that Debtors have made all payments required under the confirmed plan, and that there is no payment default. The term of Debtors' confirmed plan is 36 months, and the last payment became due on October 2013.

It appears that the "default" arises if the Internal Revenue Service Claim is allowed in the amount stated in the Service's Proof of Claim. The Debtors believe that they will be able to resolve that dispute and have the claim withdrawn. While getting the Internal Revenue Service to withdraw its Proof of Claim is not a sure thing, the amount in dispute represents a minor amount. Before dismissing this case and having the past thirty-six months of plan payments and efforts be for naught, the court will afford the Debtors the requested ninety days.

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 Trustee's Notice of Default having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Trustee's Notice of Default and Application to Dismiss Case is xxxx.

23.	**10-48732-E-13 SDH-2**	**MARK/ANTOINETTE MUSCOVITCH Scott D. Hughes**	**MOTION FOR COMPENSATION FOR SCOTT D. HUGHES, DEBTORS' ATTORNEY 6-18-14 [75]**

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is granted.

Scott D. Hughes, Counsel for Debtor, seeks additional attorney fees in the amount of $2,325.00 in fees and $3.74 in expenses. 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 Sell: The debtors moved the court for permission to sell their residence after several attempts at a loan modification. The motion to sell and the numerous e-mails regarding attempts at loan modifications requested by the debtors were not foreseen at the time the case was filed.

The hourly rates for the fees billed in this case are $250.00/hour for counsel for 9.3 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. Counsel also seeks additional costs in the amount of $3.74 for postage. The total attorneys' fees in the amount of $2,325.00 and costs in the amount of $3.74 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 Scott D. Hughes, 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 $ 2,325.00
> Applicant's Costs Allowed in the amount of $ 3.74.

24. 12-34737-E-13 TERESA NABER **MOTION TO RECONSIDER DISMISSAL**
PGM-1 Peter G. Macaluso **OF CASE**
6-6-14 [63]

CASE DISMISSED 6/3/14

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion to Reconsider Dismissal of Case is denied.

Debtor, Teresa Naber ("Debtor") moves for reconsideration of the order dismissing the case on June 3, 2014. Debtor states that she filed for Chapter 13 relief with attorney John A. Tosney. The Chapter 13 Trustee filed a Motion to Dismiss the case, asserting the plan was overextended and no modified plan had been filed to date. Attorney Aaron C. Koenig substituted into the case as attorney of record after the passing of prior counsel. Mr. Koenig filed a response to the Motion to Dismiss seeking more time to evaluate the schedules and claims. Debtor asserts that on May 14, 2014, Mr. Koenig filed, without the consent of Debtor, a response indicating that the Debtor did not have sufficient income to increase the plan payments.

Debtor asserts she consulted with Attorney Peter Macaluso and he substituted in as attorney of record on June 5, 2014. Debtor asserts an

increase in plan payments is viable and that she earns enough income to fund the plan. Debtor testifies that she is in real estate and commissions change all the time. Debtor testifies that Mr. Koenig was not willing to put in the time into her case and that he did not have any interest in her case.

Mr. Macaluso represents that a plan has been prepared and filed.

RESPONSE OF PRIOR COUNSEL

On June 6, 2014, attorney Aaron C. Koenig filed a response stating that Debtor has accused him of malpractice in neglecting her case. Mr. Koenig states that he spent a lot on her case, many hours of phone calls and court appearances, with him doing everything that could be done to save the case.

Mr. Koenig states that he discovered in September 2013 that the Debtor's plan was overextended due to a shortfall in the amount of arrears listing in the plan. Mr. Koenig states he called the Debtor and explained the problem and agreed to call Golden One Credit Union to look into the merit of the arrearage. Mr. Koenig states he was not able to reach anyone, but did an analysis off the statements and schedule filed in the cases, concluding that it was accurate. Upon showing the Debtor his findings, Mr. Koenig states that she disagreed despite the factual information that conclusively showed that he was correct. Mr. Koenig advised Debtor to call Golden One and ask for a print out of the payments made if she did not agree. Mr. Koenig states he made a follow up phone call with no response from Debtor. Mr. Koenig heard from Debtor in February when he contacted her about the Trustee's Motion to Dismiss.

Mr. Koenig states at first the strategy was to see if the claim was correct, but after re-reviewing the analysis that had been performed he realized that Debtor was not going to win on that issue. Based on Mr. Koenig's figures an increase in the debtors plan payment by roughly $210-$215 it would be enough to cover the claim. At the court hearing on March 19, Mr. Koenig states he appeared and made this request. However, thereafter, Mr. Koenig states Debtor became unresponsive. After a month or so, Mr. Koenig received profit and loss statements from the Debtor. Mr. Koenig states these were fraudulent, as they did not coincide with other information provided by the Debtor. Mr. Koenig states Debtor was not being honest with him or with the documentation provided to him.

Mr. Koenig states that based on the information provided to him, he doubted whether the Debtor could afford the plan payment, and Debtor offered no viable answer. At the hearing on the Motion to Dismiss, Counsel appeared and the case was dismissed. Mr. Koenig states the Debtor appeared at his office and he told her:

> that "I was not going to lie to the Court, I was not going to file unmerited objections to claims, I was not going to present phony profit and loss statements in an attempt to save her case." I told her that this was not a television show and that lawyers do not commit perjury in an effort to win at all costs.

Declaration, Dckt. 71.

TRUSTEE'S OPPOSITION

Trustee states that he set a hearing for a Motion to Dismiss based on the confirmed plan taking 76 months to complete. The court continued the hearing to allow Debtor more time to substantiate the claim of Golden One Credit Union. At the continued hearing, the court granted the motion to dismiss.

Trustee states that Debtor has filed and set for hearing a modified plan, which the Trustee states is feasible, but has the following issues:

1. The debtor is delinquent $479.83 under the terms of the proposed plan with last payment of $1,160.17 posted 7-2-14.

2. The Trustee is uncertain of attorney fees.

3. The Trustee is uncertain of the plan payment proposed. Debtor's motion and declaration state $1,675.00 monthly while the plan proposes $1,640.00 monthly.

4. Debtor has not provided evidence the May mortgage payment was made directly.

5. The debtor's declaration does not provide sufficient explanation or evidence to support changes in expenses.

6. Debtor's Notice, Motion, Declaration, Exhibits and Proof of Service all indicate the hearing will be before The Honorable Judge Christopher Klein in Department C when in fact the hearing will be before the Honorable Judge Ronald H. Sargis in Department E.

7. The Trustee is uncertain of the employment of the debtor.

DEBTOR'S RESPONSE

Counsel for Debtor responded, stating that he has responded to the issues of the Trustee in the Motion to Modify.

DISCUSSION

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic),

misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, it appears Debtor seeks to vacate the order dismissing the bankruptcy case due to an attorney who was unfamiliar with her case and who was unable to effectively manage her case to avoid dismissal. This does not appear to be a mistake, surprise or excusable neglect. Therefore it appears Debtor seeks relief pursuant to the catch-all provisions in Federal Rule of Civil Procedure 60(b)(6), which is for extraordinary circumstances.

Even if the court found such extraordinary circumstances, the court has reviewed the proposed modified plan and found that the plan is not confirmable. Where Debtor has had her case dismissed for inability to complete a plan in the maximum time required by law, the court finds the request for more time to figure out payments unreasonable. The court finds that a request to vacate a dismissal while the Debtor is currently delinquent under the newly proposed plan is a serious sign that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The court is also troubled by the lack of response to the numerous changes regarding her individual expenses. Absent explanation from the Debtor as to how she proposes to achieve this increase in expenses, the court does not believe the Debtor's projection is in good faith (especially since it appears to have been made in response to the Trustee's objection to Plan confirmation and the pending Motion to Vacate Dismissal). This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3).

The Debtor's declaration in support of this motion is also problematic. When faced with a necessary increase in monthly payments, Debtor states under penalty of perjury,

> "I told him that I didn't have a problem increasing the payment, as I could come up with the money. I am in real estate and commissions change all the time. I have always made my payments...."

Declaration, Dckt. 65, pg. 2:17-19. Taken as truthful, the Debtor has, and apparently previously had, the ability to make a higher monthly plan payment. The confirmed Chapter 13 Plan in this case provided for a monthly payment of $1,401.00 for a period of 60 months. Dckt. 5. Under that Chapter 13 Plan the Debtor had monthly projected disposable income to only make a 0.00% dividend for unsecured claims. *Id.*, Class 7 Claim treatment. The $1,401.00 monthly payment was to be disbursed by the Chapter 13 Trustee to pay: (1) Chapter 13 Trustee fees (estimated to be $98.00), (2) Class 1 secured claim current monthly payment of $1,143.00 and an arrearage payment of $43.52, and (3) $86.56 for Internal Revenue Service Class 2 secured claim ($4,700.00).

Debtor immediately defaulted in the plan payments and the Trustee filed a motion to dismiss, asserting a $1,401.00 default. Motion to Dismiss, Dckt. 29. Debtor cured the default and the Plan was confirmed by order filed on October 31, 2012. Dckt. 40.

The $1,401.00 in monthly Chapter 13 Plan payments, and confirmation of the Chapter 13 Plan, was premised on the financial information provided under penalty of perjury by Debtor on Schedules I and J, and Statement of Current Monthly Income (Form 22C). Beginning with the Statement of Current Monthly Income, Debtor states that during the six month period preceding the commencement of the Chapter 13 case her average monthly income was $425.00 from wages, $1,650.00 from rent and real property income, $189.77 Old republic commission, and $837.65 Bolt Insurance Services commissions. Dckt. 1 at 10. Debtor states that her total monthly income is $3,618.22.

On Schedule I Debtor lists $1,947.60 in wages, ($221.36) for payroll taxes and Social Security, $1,650.00 from operation of business, and $250.00 mileage and phone stipends. *Id.* at 35. The total income listed on Schedule I is $3,626.24.

On Schedule J Debtor lists $2,225.24 in monthly expenses. *Id.* at 36. It is these expenses, stated under penalty of perjury, which yields the Monthly Net Income of $1,401.00 which provides the $1,401.00 in projected disposable income upon which the Chapter 13 Plan is based. On the Statement of Financial Affairs the Debtor reports $19,800.00 in 2011 rent income and

$13,200.00 in 2012 rent income. *Id.* at 39.

Interestingly, the expenses listed on Schedule J appear to be somewhat "creative." While providing for a $750.00 monthly mortgage payment, no expense is listed for property taxes or insurance on the home. Debtor lists only ($350.00) a month for Food and home supplies and ($300) for transportation. No provision, other than the ($221.36) of withholding for income taxes and insurance for the wages, no other provision is made for income taxes for the other income. It appears that the expenses listed on Schedule J are construed to achieve the appearance of $1,401.00 in projected disposable income rather than an accurate statement of true expenses.

On June 13, 2014, Debtor filed Amended Schedules I and J. Dckt. 79. Debtor states that she now has gross income of $4,014.00 in income from her business. *Id.* at 5. From his, Debtor states that she incurs ($1,136.00) in expenses in generating that income. This results in Debtor showing Average Net Monthly Income of $2,364.00. The expenses include ($250.00) for "taxes," which appears to be for income and self-employment taxes.

For expenses, Debtor now lists $435.00 for food and household supplies. Her transportation expenses have increased to $425.00 (+42%). No expenses are listed for either property taxes or insurance for her home. *Id.* at 36.

On January 16, 2014 the creditor holding the Class 1 secured claim filed a Notice of Mortgage Payment Change. The principal, interest and escrow payment is stated to be $1,160.16. The escrow payment is stated to be $357.26 (insurance and property taxes).

Debtor filed a proposed First Modified Plan on June 17, 2014. Dckt. 84. The Debtor's monthly plan payment increases to $1,640.00 commencing in June 2014. Again, it is only the Class 1 secured claim (current payment and arrearage), Class 2 Internal Revenue Service Secured Claim and the Chapter 13 Trustee fees that are to be paid under the Plan – with one exception. Now, Debtor's counsel is to be paid $1,500.00 through the Plan.

In her declaration in support of confirmation, the Debtor fails to provide the court with testimony as to how and when her income has changed. Declaration, Dckt. 82. The $1,640.00 monthly plan payment is based on the Monthly Net Income now shown on Amended Schedule J (Dckt. 79). However, to generate this net number, Debtor deducts $700.00 a month for her mortgage payment. This "double deducts" this expense. First, deducting it from her income to generate the Net Monthly Income number, and then by "paying it a second time" when the Chapter 13 Trustee makes the monthly mortgage payment through the Plan from the $1,640.00 projected disposable income (which has already been reduced for "payment" of the $700.00 principal and interest mortgage payment).

Something is grossly wrong in this case and the Debtor's computation of net income. It is clear on the face of Schedule J and Amended Schedule J and the Chapter 13 Plan that she is double deducing (and pocketing) a purported $700.00 a month payment. In the two years that this case has been pending, is almost $8,400.00 which should have gone to fund the Plan.

Furthermore, the court does not find sufficient extraordinary circumstances to grant relief. At best, it appears there was a miscommunication between prior counsel and Debtor. At worst, Debtor provided incorrect statements that prior counsel refused to submit to the court in order to save her case. Either circumstance is not sufficient to warrant the court to vacate the order dismissing the case.

Not vacating the dismissal does not cause any "prejudice" to the Debtor. The only payments made are for the secured claim (current and arrearage) and secured tax claim. By starting over, and accurately providing income and expense information, the Debtor can prosecute a new Chapter 13 case in good faith.

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 Reconsideration of Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

25. 12-34737-E-13 TERESA NABER **MOTION TO MODIFY PLAN**
PGM-2 Peter G. Macaluso **6-17-14 [80]**
CASE DISMISSED 6/3/14

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

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

Below is the court's tentative ruling.

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

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

NOTICE

While notice was properly provided pursuant to Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g), this case was dismissed by order on June 3, 2014. Neither the Notice or the Motion mention this fact or the fact that there is a pending Motion to Vacate Dismissal. The parties receiving notice may not be aware that this Motion is taking place.

Furthermore, Debtor's Notice, Motion, Declaration, Exhibits, and Proof of Service all indicate that the hearing will be before the Honorable Judge Christopher Klein in Department C, when in fact the hearing will be before the Honorable Judge Ronald H. Sargis in Department E.

TRUSTEE'S OBJECTION

The Trustee opposes confirmation offering evidence that the Debtor is $479.83 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).

Additionally, Trustee states Section 2.06 of Debtor's modified plan provides for $1,500.00 in attorney's fees that shall be paid through the plan, $0.00 paid prior to the filing of the case, and that Debtor's counsel shall file and serve a motion for attorney's fees. Section 2.07 provides for a monthly dividend of $25.00 for administrative expenses. Attorney's fees under the confirmed plan are $0.00 per Debtor's prior attorney's Amended Disclosure of Compensation of Attorney, and the Order confirming. Debtor filed a Substitution of Attorney on June 5, 2014, which was granted June 10, 2014. Counsel's Disclosure of Compensation of Attorney (DN 78) indicates counsel has agreed to accept $300.00 per hour and received $1,000.00 prior to the filing of the disclosure statement. The Trustee believes Section 2.06 should reflect information as to the actual attorney's fees expected, including any amounts paid directly.

The Trustee is also uncertain of the plan payment proposed. Debtor's Motion and Declaration indicate payments of $1,675.00 per month shall begin June 2014, where Section 1.01 of the proposed modified plan indicates plan payments beginning June 2014 shall be $1,640.00.

Trustee also states that Section 2.11 of Debtor's proposed modified plan provides for one month of mortgage payments in Class 4. Debtor indicates the May mortgage payment of $1,160.16 to Dovenmuehle Mortgage was paid directly to the lender in lieu of the plan payment since Debtor's case was dismissed. Debtor has not provided proof that the May mortgage payment was made either by way of bank statement or a copy of the cancelled check.

The Trustee cannot tell if the Debtor can afford the plan payments based on the Declaration, 11 U.S.C. § 1325(a)(6). Debtor's Declaration fails to adequately explain the numerous changes regarding her individual expenses.

Debtor's Amended Schedules I and J filed on June 13, 2014 indicate Debtor is now self employed with a monthly income of $4,014.00. Debtor's Business Income and Expenses, which was not included as part of Debtor's updated Schedules I and J filed as an Exhibit, reflect an average gross monthly income of $3,500.00 and a net monthly income of $2,364.00. Trustee states that it is unclear whether the $1,650.00 difference between the claimed monthly income of $4,014.00 and the net business income of $2,364.00 is Debtor's rental income, since this is not clearly stated and Debtor did not include a statement for the property. Additionally, Debtor lists her business expenses as $1,136.00, which includes $450.00 for travel. Debtor's personal expenses include transportation expenses of $425.00. Combined this

would reflect a monthly travel and transportation expense of $875.00, which appears excessive.

Lastly, Debtor's provides on Schedule I that she is self employed in real estates sales and her employer is Client First Investments Inc. According to the State of California Bureau of Real Estate website, debtor's employing broker is Loans Realty Group Corporation, 1121 Ventura Dr., Pittsburgh, CA. Additionally, Debtor's Schedule I reflects her employer's address as Madison Ave., Sacramento, but Debtor's Business Expenses do not reflect any kind of rental expense.

DEBTOR'S REPLY

Counsel for Debtor filed a response, stating that Debtor believes she is not delinquent and requests more time to provide proof of the payment. Counsel states that the declaration was incorrect regarding the amount of the monthly payments. Counsel for Debtor states that the total change of $193.76 in living increases is reasonable, necessary and non-material. Counsel states the Debtor as an agent does not pay rent, but a percentage of her commissions.

DISCUSSION

The court does not find the current plan confirmable. First, Debtor does not provide any evidence in her response to the Trustee's objection. Argument from Counsel is not evidence that the court can consider.

Furthermore, in this circumstance, where Debtor has had her case dismissed for inability to complete a plan in the maximum time required by law, the court finds the request for more time to figure out payments unreasonable. The court finds that a request to vacate a dismissal while the Debtor is currently delinquent under the newly proposed plan is a serious sign that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The court is also troubled by the lack of response to the numerous changes regarding her individual expenses. Absent explanation from the Debtor as to how she proposes to achieve this increase in expenses, the court does not believe the Debtor's projection is in good faith (especially since it appears to have been made in response to the Trustee's objection to Plan confirmation and the pending Motion to Vacate Dismissal). This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3).

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

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

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

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

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

26. 09-47939-E-13 NICOLE PRESTON — MOTION TO MODIFY PLAN
MWB-2 Mark W. Briden — 6-9-14 [76]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 June 9, 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.

27. 13-20541-E-13 NEIL FREEMAN **MOTION TO MODIFY PLAN**
DEF-6 David Foyil **6-5-14 [79]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2014. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee objects to the plan, stating Debtor has paid ahead

$3,003.00 under the proposed plan. Debtor's modified plan proposes plan payments of $2,704.00 in months 1 through 14 and thereafter shall be $1,703.00. Under the modified plan, Debtor would need to have paid to the Trustee through June 2014 a total of $42,965.00. The Trustee's records reflect that Debtor has actually paid a total of $45,968.00, paying $2,704.00 for a total of 17 payments so far, a difference of $3,003.00. The Trustee asks that the modified plan only be approved if it provides for $46,968.00 through June 2014, and then $1,703.00 thereafter.

Debtor has not provided a response to date.

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

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

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

28. 14-21142-E-13 LBG-3 — THOMAS LISLE AND BARBARA TREAT — Lucas B. Garcia — MOTION FOR COMPENSATION FOR LUCAS GARCIA, DEBTORS' ATTORNEY — 6-20-14 [57]

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).

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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 20, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is continued to xxx.

FEES REQUESTED

Law Offices of Steven Johnson, the Attorney ("Applicant") for Thomas Lisle and Barbara Treat, Debtors, makes a Final Request for the Allowance of Fees and Expenses in this case.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Law Offices of Steven Johnson("Applicant"), Attorney for 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 continued to xxxx.

29.	**14-24643-E-13** **DPC-1**	**LAQUETA MARTIN** **Susan J. Dodds**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-11-14 [16]**

Final Ruling: The moving party having filed a Notice of Withdrawal, no opposition to the motion having been filed, the moving party having the unilateral right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(I) and Fed. R. Bank. P. 9014 and 7041, and no issues identified by the court with respect to the dismissal of the Motion, the court removes the Motion from the calendar.

30. 14-25243-E-13 SAPPHIRE DELANEY
DPC-1 Mikalah R. Liviakis
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-25-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is below median income and proposes to pay $440.00 per month for 60 months with a guaranteed dividend of 0% to general unsecured claims. Trustee states that Debtor has failed to report all household income. On Schedule J Debtor explains that her husband and mother in law live with her and cover some of the household expense. It appears that the Debtor has failed to report their income on both Form 22C and on Schedule I. Trustee states that Debtor admitted at the 341 that her husband receives Cal Works in addition to the food aid reported on Schedule J.

DEBTOR'S RESPONSE

Debtor filed amended Schedule I and J, reflecting the husband's income from cash aid and food stamps along with expenses. Debtor states that she and her husband and son live with her mother and father in law and pay $400.00 a month to cover rent, utilities and phone expenses.

Debtor having provided testimony as to the discrepancies in Schedule I and J, the court overrules the objection.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 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.

31. 13-20745-E-13 CA-1 — DARWIN GUMOBAO AND JOCELYN ALVAREZ-GUMOBAO — Michael David Croddy — CONTINUED MOTION TO INCUR DEBT — 6-10-14 [20]

CONT. FROM 6-24-14

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor pro se), Debtor's Attorney, Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

JULY 22, 2014 HEARING

Nothing has been filed to date.

PRIOR HEARING

Debtors Darwin and Jocelyn Gumobao, ("Debtors") seek authorization from the court to enter into a loan modification agreement with the American Servicing Company with respect to the real property commonly known as 4212 Palm Ave., Sacramento, California.

Debtors have filed a "Motion to Incur Debt" to "purchase" 4212 Palm Ave., Sacramento, California (Dckt. 22, Item 4). However, it appears that Debtors already own the real property. (Dckt. 1, Schedule A). It appears Debtors actually seek approval of a Loan Modification.

INCORRECT PARTY TO LOAN MODIFICATION

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. Debtors identify the "Lender" party to the subject loan modification as American Servicing Company. The creditor as listed on the B-10 Form is HSBC Bank USA, however, the Debtors wish to enter into a permanent loan modification agreement with American Servicing Company. This is not sufficient. This is consistent with Proof of Claim No. 12 filed by HSBC Bank USA, in this case, which states that the Bank is the creditor, not a "servicing company." FN.1.

FN.1. If counsel for the Debtor had reviewed Proof of Claim No. 12, it is

obvious that a loan servicing company is not the creditor. This is not unique to this attorney, as it continues to amaze the court how many knowledgeable, well versed consumer attorneys request orders of the court against or authorizing transaction with persons who are not parties to a transaction. A simple rule of thumb that when the other person has the word "*Servicing*" in its name, it is most likely not a creditor but an agent (loan servicer, collection agency) for the actual creditor.

Furthermore, the Loan Modification Approval Letter filed by Debtors as Exhibit "A" in support of the motion dated March 14, 2014, is from America's Servicing Company, and includes the modification proposal for Debtors' residence. Dckt. No. 23. However, while America's Servicing Company is the party contracting with Debtors to modify the subject loan, they are not the holder of the underlying claim.

The Debtors have failed to provide a copy of the credit agreement. They provide only a letter with some terms listed. The court has no idea of what the complete terms are for the modification.

The parties will have to accurately and correctly identify the actual creditor who is entering into this Loan Modification Agreement, have the Agreement properly identify the creditor, and if the Agreement is being executed by an agent, that the agent be correctly identified and proof of its authority provided to the court. The current motion is deficient because it does not meet the requirements of Federal Rule of Bankruptcy Procedure 9013 in stating the grounds for relief with particularity, and does not comply with the provisions of 11 U.S.C. § 364(d).

The Debtors and "Lender" will have to provide the court with a copy of the actual post-petition credit agreement. Fed. R. Bankr. P. 4001(c)(1). The court does not grant *carte blanche* authority to persons to impose any and all types of terms they desire on debtor under the guise of a court authorized post-petition credit transaction. Quite possibly "Lender" may try to impose unreasonable conditions (such as a 100% default penalty, 25% interest rate, mandatory insurance from "Lender" owned entities, and the like), which "Lender" would later defend as being ordered by the court.

The court continued the hearing in light of Wells Fargo Bank, N.A. having been ordered to appear on June 26, 2014 to address related issues.

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 Darwin and Jocelyn Gumobao ("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 Approve the Loan Modification is denied without prejudice.

32.	13-20745-E-13 CA-2	**DARWIN GUMOBAO AND JOCELYN ALVAREZ-GUMOBAO** **Michael David Croddy**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY & ASSOCIATE, P.C. FOR MICHAEL D. CRODDY, DEBTORS' ATTORNEY(S)** **6-22-14 [25]**

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Croddy & Associates, P.C., the Attorney ("Applicant") for Darwin Gumobao and Jocelyn Alvaresz-Gumobao the Debtors ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period October 2, 2012 through February 28, 2013.

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

Pre-Confirmation: Applicant spent 11.3 hours in this category for total fees in the amount of $3,561.80. Applicant met with Debtors, prepared and filed documents, and attended the 341 meeting of creditors.

Post-Confirmation: Applicant spent 0.00 hours in this category in the applicable fee period.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with

regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant in preparing and filing the petition benefitted the estate. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Croddy	6.90	$375.00	$2,587.50
Legal Assistant	4.4	$125.00	$550.00
Total Fees For Period of Application			$3,137.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $3,137.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $424.30 pursuant to this applicant for the filing fee and postage costs.

The First Interim Costs in the amount of $424.30 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$ 3,137.50
Costs and Expenses	$ 424.30

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Croddy & Associates, P.C. ("Applicant"), Attorney for 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 Croddy & Associates, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Croddy & Associates, P.C., Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 3,137.50
> Expenses in the amount of $ 474.30,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

33. 14-24045-E-13 DAVID OLIVERA **OBJECTION TO CONFIRMATION OF**
DPC-1 Pro Se **PLAN BY DAVID CUSICK**
6-11-14 [18]

Final Ruling: No appearance at the June 22, 2014 hearing is required.

The case having previously been dismissed, the Objection is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection 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 Objection is dismissed as moot, the case having been dismissed.

34. 14-24645-E-13 ANDREW/KATHLEEN REED **MOTION TO CONFIRM PLAN**
MLA-2 Mitchell L. Abdallah **5-29-14 [25]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United

States Trustee on May 29, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

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 the Debtors' Plan is not the Debtors best efforts under 11 U.S.C. § 1325(b). Debtors Form 22C shows that Debtors are below median income, however on line #3b, debtors subtract $815.33 business operation expenses from their income, without this deduction, Debtors' monthly gross income totals $5,901 ($856+$225+$4920) which equates to an annual income of $70,812, which is above median income. Debtor is currently proposing a 36 month plan at 9.7% to general unsecured creditors; therefore, unsecured creditors are not receiving what they are entitled. The commitment period of the plan should be 60 months. Debtors should be required to amend Form 22C to correctly report their income as over median.

Additionally, the Trustee argues that the plan may be causing unfair discrimination to the unsecured creditors. According to Schedule J, Debtors are paying an ongoing student loan payment. Debtors fail to disclose this treatment to Creditors in their Chapter 13 plan as either a Class (3, 4, 5), or general unsecured to be paid directly by debtors in the additional provisions. (While the payment is revealed on Schedule J, which has not been served on creditors.) Where the Debtors have announced their intent to pay the student loan directly even if not authorized by the Plan, confirmation of the Plan allows the Debtors to unfairly discriminate against general unsecured creditors in favor of the student loan.

The Trustee also states that the plan may not provide for all of the Debtors' projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). On June 12, 2014, the Trustee received an email from Abdallah Law Group, which included Debtors' 2013 Tax Returns. A review of the returns revealed that Debtors received 2013 tax refunds of $6,320 from IRS for 2013 and $1,627 from Franchise Tax Board for a total of $7,947. Debtors also received refunds for 2012: $772 federal and $1,945 state for a total of $2,717. On Schedule I, Debtors report their net average net income of $6,791 per month. If the Debtors contributed their tax refund into their household income at 1/12 per month, they would have an estimated additional $662.25 per month ($7,947/12=$662.25) to contribute toward their plan.

Lastly, the Trustee states he is unable to determine feasibility of the plan, Debtors failed to provide Trustee with a Business Budget detailing their business income and expenses. On Statement of Financial Affairs # 1,

Debtors report income from operation of business for 2014-2012. On Statement of Financial Affairs #18, Debtors report operating "Looking Back Antiques and Collectibles" and counsel has charged fees of $5,000 where only $4,000.00 is allowed in a non-business case under Local Rule 2016-1(c)(1). It appears the Debtors currently operate a business and have not reported all income and expenses.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

35. 14-24645-E-13 MLA-3 — ANDREW/KATHLEEN REED — Mitchell L. Abdallah — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. — 6-24-14 [34]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion to Value filed by Andrew and Kathleen Reed, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 403 Montaro Court, Lincoln, California, "Property." Debtor seeks to value the Property at a fair market value of $310,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $399,697.00. Creditor's second deed of trust secures a claim with a balance of approximately $50,386.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Andrew and Kathleen Reed, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 403 Montaro Court, Lincoln, 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 $310,000.00 and is encumbered by senior liens securing claims in the amount of $399,697.00, which exceed the value of the Property which is subject to Creditor's lien.

36. 12-20846-E-13 SALVADOR/AUDRA ACOSTA MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 6-12-14 [106]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Chapter 13 Trustee opposes the motion on the basis that the plan will complete in 46 months as opposed to the 36 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The Trustee is also uncertain of the Debtor's primary source of income, as the supporting motion states that Debtor's income has decreased tremendously but the declaration states that the primary source of income is from disability and that this income source is anticipated through the remainder of the plan. Trustee states Debtor's last Schedule I (Dckt. 109) incorrectly lists primary Debtor as "Debtor 2 income as Unemployed" with $0.00 income.

DEBTOR'S RESPONSE

Counsel for Debtor responds stating that an adjustment to the 2.07 disbursement will need to be made to allow the $590 being held by the Trustee, less Trustee fees, to be disbursed to Attorney for fees associated with the case. Counsel for Debtor also states that the Debtor's income is from disability payments as neither are employed.

However, Debtors have not provided any admissible evidence in support of the contentions set forth by Debtor's Counsel.

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

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

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

37. 12-23246-E-13 RAUL/SAMANTHA VELA — MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab — 6-9-14 [26]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore,

the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

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 June 9, 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.

38. 10-31048-E-13 ROBERT HERNDON MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie 5-29-14 [30]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 May 29, 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.

39. 14-23248-E-13 JAMES BURKHALTER **AMENDED MOTION TO CONFIRM PLAN**
MRL-2 Mikalah R. Liviakis **5-13-14 [36]**

Final Ruling: No appearance at the June 22, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

40. 14-25048-E-13 JOHN/BRENDA CHAPMAN
DPC-1 Scott A. CoBen

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
6-18-14 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtors' best effort. Debtor is over the median income and is proposing plan payments of $1,220.00 for 60 months with a 5.35% dividend to unsecured creditors, totaling $14,600.62. However, Trustee states that the Debtors' income is unclear - with Schedule I listing gross income of $13,500.00, Statement of Financial Affairs listing $77,317.00 annually which averages to $17,181.55 per month, Form 22C lists gross income of $11,973.00. Trustee further states that the Debtors profit and loss statements for the six months prior to filing stated an average monthly gross income of $12,305.00.

The Trustee also notes a discrepancy between the testimony of rental income received and the 2013 tax return rental income. The Trustee also states that the 2013 Tax Return shows gross income from Construction of $16,748.00, but according to the Statement of Financial Affairs # 18 Construction business was closed in 2012 and no income from construction is listed on Schedule I. The Trustee is uncertain if Debtor continues to have income from this source.

Additionally, the Trustee states that the Debtors have incomplete documents. First, Debtors admitted at the First Meeting of Creditors that the Colfax Hwy property was foreclosed in 2013 but no information was listed in the Statement of Financial Affairs. Trustee states that the property addresses listed in Schedule A do not match the properties or property addresses listed in the 2013 tax returns. The Debtors Business Income and Expense (Doc #1, Page 36) does not provide the Trustee with a clear breakdown of the debtors income and expense. Lastly, Trustee states line #3 on The Statement of Financial Affairs does not appear to be accurate, as the debtor testified at the First Meeting of Creditors the payments to the creditors listed in Class 4 are current.

DEBTOR'S RESPONSE

Debtor filed a response to the Trustee's objection, stating that Debtor has informed certain tenants that their rent will be increasing, which will result in an increase of gross rental receipts. Debtors also state that they put up Christmas lights and decorations at a private home which grossed $16,748 and Debtor plans on increasing the fees for decorations this year. Debtors also state they plan on renting out two garage units to increase gross receipts. Debtor states that to the extent any of these projections do not occur, the Debtors will be taking over their own bookkeeping, which will result in a savings of $866 per month and that Mr. Chapman is now eligible for Social Security benefits and can fund the plan with these if necessary.

Debtors state they have corrected their Statement of Financial Affairs. Debtors also explain that the real property listed on Schedule A does not match the real property listed on the tax return because the properties have multiple mail boxes but only one address.

DISCUSSION

There still appears to be a discrepancy regarding Debtors income. The Amended Statement of Financial Affairs now states that Debtor has income of $41,549 for 2014 year to date (from $77,317). Debtor has failed to explain the reduction in income, which does not appear to reflect the statements made on Schedule I or the Debtors profit and loss statements for the six months prior to filing stated an average monthly gross income of $12,305.00.

Debtors also do not address that the Business Income and Expense are unclear and fail to provide a breakdown of their income and expense.

Based on the foregoing, 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.

41. 14-25048-E-13 JOHN/BRENDA CHAPMAN — **OBJECTION TO CONFIRMATION OF PLAN BY NEVADA COUNTY TAX COLLECTOR**
Scott A. CoBen — **6-17-14 [21]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13

Trustee, on June 17, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Nevada County Tax Collector ("Movant") opposes confirmation of the Plan on the basis that Debtors owe past due property taxes on two Nevada County Properties totaling $27,584.48, as evidenced by Movant's Proof of Claim, which fails to apply the correct annual interest rate on delinquent property taxes. Movant states pursuant to California Revenue and Taxation Code section 4103 the annual interest rate must be 18%, while Debtor provides for an interest rate of 4.75%.

The interest due on delinquent California real property taxes is set by statute. The statutory interest rate payable on delinquent real property taxes is 18% per annum. See Cal. Rev. & Tax. Code § 4103(a). Debtors have not provided for the statutory interest rate for Movant's claim.

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 Nevada County Tax Collector 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. 14-25048-E-13 JOHN/BRENDA CHAPMAN
Scott A. CoBen

OBJECTION TO CONFIRMATION OF PLAN BY COUNTY OF SIERRA, TAX COLLECTOR VAN MADDOX
6-10-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on June 13, 2014. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

County of Sierra, a political subdivision of the State of California ("Movant") opposes confirmation of the Plan on the basis that there are secured property taxes totaling $9,841 on property located in the County of Sierra which are not correctly identified in the Debtors' plan. Movant sates the Debtors do not identify future or contingent tax claims, including taxes for the fiscal year that became owing as of January 1, 2014 under the California state lien date. These taxes are due and owing in the amount of $1,690.00. Furthermore, Movant states that under California State Law Code Section 4103, the California statutory interest rate is 1.5% per month. FN.1.

FN.1. The objecting party filed the objection and proof of service in this matter as one document as well as the notice, proof of service and exhibits 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).

A review of the Claim Registrar shows the Sierra County Tax Collector has filed Proof of Claim No. 7 for a secured claim of $11,531.00. The proposed plan does not provide for the full amount of the secured claim. Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's full secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Furthermore, the interest due on delinquent California real property taxes is set by statute. The statutory interest rate payable on delinquent real property taxes is 18% per annum. See Cal. Rev. & Tax. Code § 4103(a). Debtors have not provided for the statutory interest rate for Movant's claim.

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 Sierra County Tax Collector 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.

43. 10-47350-E-13 JOHN/JENNIFER GONZALES **MOTION TO MODIFY PLAN**
WW-5 **6-12-14 [71]**
CASE DISMISSED AS TO CO-DEBTOR 11/23/13

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is $650.00 delinquent in plan payments, which represents multiple months of the plan payment. 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).

Counsel for Debtor responds, stating that Debtor has made the delinquent payment. However, no admissible evidence has been presented to support the factual assertions made in the pleading.

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

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

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

44. 13-35350-E-13 GDG-1 GEORGIA GOODSON Gary D. Greule — MOTION TO MODIFY PLAN 6-6-14 [19]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 June 5, 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.

45. 11-23451-E-13 PGM-4 | **CLARENCE ISADORE AND DEATRA JONES-ISADORE** | **MOTION TO MODIFY PLAN**
Peter G. Macaluso | **6-6-14 [91]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Chapter 13 Trustee opposes confirmation offering evidence that the Debtor is $2,500.00 delinquent in plan payments, which represents multiple months of the plan payment. 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).

Trustee also states that Debtor's proposed plan payment is unclear. Section 1.01 of Debtor's modified plan proposes a plan payment of $98,204.15 through May, 2014 (month 39 where Debtor's petition was filed February 11, 2011), $2,500.00 for 1 month, then $1,750.00 for 21 months starting June 2014. It is unclear in this proposed plan payment as to when the $2,500.00 payment is to be made, since May is the 39th month and payments of $1,750.00 are to begin in June for the remaining 21 months. Debtor does not indicate if this is an additional payment to be made in June or if they are adding another month, which would make the plan term 61 months. Debtor's Motion (DN indicates Debtor's are proposing a plan payment of $98,204.15 total paid in as of June 5, 2014, then $1,750.00 beginning June 2014 for 21 months. This motion does not include the $2,500.00 payment. Debtor's Declaration indicates Debtor's are proposing a plan payment of $98,204.15 over the past 39 months, a lump sum payment of $2,500.00, then $1,750.00 per month starting June 2014 for the balance of the plan. This proposed payment appears to allow for a $2,500.00 lump payment in June, although not clearly stated.

DEBTOR'S REPLY

Counsel for Debtor responds, stating that they have paid the $2,500 by July 25, 2014, if not sooner. However, no evidence has been presented in support of the factual assertions in the pleadings.

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

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

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

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

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

46. 09-48453-E-13 JCR-7 | **STEVEN/DONNA MENSER** | **Julian C. Roberts** | **MOTION TO COMPEL** | **5-12-14 [256]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The failure of the respondent and other parties in interest to file written opposition at least 7 days (in this case Debtors' counsel having provided additional time in the notice) 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). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Compel is granted and Bank of America, N.A. shall disgorge an additional $15,014.55 in payments it has received from the Chapter 13 Trustee in this case.

Seven and Donna Menser ("Debtor") seeks an order compelling Bank of America, N.A. to disgorge the $18,017.46 in excess payments to the Chapter 13 Trustee.

Debtor states that at some unknown time, Bank of America, N.A. replaced BAC Home Loans with Select Portfolio Servicing, Inc. Debtor asserts that they have been attempting to contact Select Portfolio Servicing, Inc. to demand "extra" payments be refunded. Counsel for Debtor asserts he attempted to contact the bank regarding the status of the "extra" payments made by the Debtors but the bank refused to communicate with Counsel.

No declarations are filed in support of the Motion. Unauthenticated exhibits are filed with the Motion. Exhibits A and B, Dckt. 257. Exhibit B is a "Table" of Trustee payments, for which nobody is willing to provide testimony that (1) they prepared it and (2) the information therein is correct.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee responds to the motion stating that according to the Trustee's records, Select Portfolio Servicing, Inc. sent a refund in the amount of $3,002.91 to the Trustee on May 8, 2014. There was no letter attached to explain what the refunded amount represented, but the amount was identical to the monthly disbursement to this Creditor. The Trustee provides a Declaration as evidence of such asserted facts. Declaration, Dckt. 261.

DISCUSSION

This Motion was filed by the Debtors to address a long and tortured saga in this bankruptcy case concerning payments and modified plans. The court incorporates herein by this reference its Civil Minutes from March 19, 2014 hearing on Chapter 13 Trustee's Motion to Dismiss the bankruptcy case. Dckt. 249.

Debtor has not provided an evidence in support of the factual contentions set out in the Motion to Compel. Furthermore, the motion is sparse on specific relevant facts and legal authority.

In reviewing the Notice of Hearing filed and served by the Debtors some deficiencies arise. Notice, Dckt. 265. Notice is given that the hearing will be conducted at 3:00 p.m. on July 22, 2014. Debtor provides that opposition shall be filed an served on or before July 15, 2014, which is seven (7) days before the hearing. Local Bankruptcy Rule 9014-1(f)(1) requires written opposition to be filed fourteen (14) days before the hearing and Local Bankruptcy Rule 9014-1(f)(2) requires no written opposition before the hearing. Since the full 28 days notice was given, a written opposition was required. The court extends the response time for Bank of America, N.A. to the seven days before the hearing as stated in the Notice.

The next issue is whether the Motion may be granted without notice. This bankruptcy case was filed on January 10, 2010 - now 56 months ago. It is coming to the time to wrap this case up. When a party fails to respond, the court may enter the parties default. Bank of America, N.A. has failed to respond and the court so enters the default of the bank.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the court must enter the party's default. Fed. R. Civ. P. 55. Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE - CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

Here, Debtors state with particularity in the Motion (Fed. R. Bank. P. 9013),

A. Jurisdiction for this Contested Matter exists pursuant to 28 U.S.C. §§ 157 and 1334. This is a Core Matter (arising under the Bankruptcy Code provisions for treatment of claims and payments through a confirmed Chapter 13 Plan).

B. Debtors paid BAC Home Loans $4,370.32.

C. Debtors' proposed 3rd Amended Plan required a payment of $3,002.91.

D. Debtors continued making payments directly to BAC home Loans, notwithstanding the 3rd Amended Plan requiring that payments be made by the Chapter 13 Trustee.

E. On April 26, 2011, Debtors received court authorization for a loan modification with BAC Home Loans (identified as a subsidiary of Bank of America, N.A.). This resolved the arrearage.

F. In the Debtors' 5th Amended Plan the issue of the $3,002.91 payment by the Trustee was provided for by adjusting the Debtors' plan payments going forward.

G. On July 30, 2013, the Chapter 13 Trustee filed a Motion to Dismiss the case, asserting a default by Debtors. Debtors opposed the Motion.

H. The Trustee's Motion was continued several times to afford the Debtors the opportunity to communicate with Bank of America, N.A. and Select Portfolio Servicing (identified as the successor servicer for BAC Home Loans).

I. Though requested, Bank of America, N.A. has failed or refused to communicate with Debtors' counsel concerning alleged overpayments received by the Bank.

J. The Debtors filed the present Motion for an order disgorging overpayments from Bank of America, N.A.

K. Debtors seek to have $18,017.46 in asserted overpayments disgorged from Bank of America, N.A.

Motion, Dckt. 256.

Though not authenticated, the Debtors provide as Exhibit B, served with the Motion, a Table which lists $3,002.91 payments made by the Chapter 13 Trustee for the months of September 2010 through February 2011. These six payments of $3,002.91 total $18,017.46, the amount sought in the Motion.

The failure of the respondent and other parties in interest to file written opposition at least 7 days (in this case Debtors' counsel having provided additional time in the notice) 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). When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the court must enter the party's default. Fed. R. Civ. P. 55. Though rarely done by this court, this represents one of those very, very, very extraordinary circumstances where the respondent's admissions by failing to file an opposition are sufficient for the granting of the relief.

Bank of America, N.A. having been served with the Motion and supporting pleadings as required by Federal Rule of Bankruptcy Procedure 7004(h) would have responded if it disputed the contention that it has been over-disbursed on its claim in this case.

The Chapter 13 Trustee has confirmed that $3,002.91 of the $18,017.46 over-disbursement has already been received from the loan servicer, Specialized Loan Servicing. That leaves $15,014.55 of the undisputed over-disbursement to be disgorged by Bank of America, N.A.

The Motion is granted and Bank of America, N.A. is ordered to disgorge and pay to the Chapter 13 Trustee, on or before August 15, 2014, $15,014.55 which shall constitute a recovery by the Chapter 13 Trustee of payments made to Bank of America, N.A. in excess of the amounts provided for in the confirmed plan in this case.

The Chapter 13 Trustee shall hold the monies until September 15, 2014, and if no party in interest in this case has filed an appropriate motion or adversary proceeding asserting the right to the monies or disbursement through the Chapter 13 Plan, the Chapter 13 Trustee shall disburse the $15,017.46 paid by Bank of America, N.A. and the $3,002.91 paid by Specialized Loan Servicing for Bank of America, N.A. in this case, to disbursed through the Chapter 13 Plan, in addition to all other plan payments required by the Debtors under the confirmed plan.

The court does not have sufficient factual information to determine if amounts paid to Bank of America, N.A. should be disgorged based on the pleadings filed by the parties.

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 Compel 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 granted and $18,017.46 in payments made to Bank of America, N.A. by the Chapter 13 Trustee shall be disgorged by the Bank.
>
> **IT IS FURTHER ORDERED** that Bank of America, N.A. is ordered to disgorge and pay to the Chapter 13 Trustee, on or before August 15, 2014, $15,014.55 which shall constitute a recovery by the Chapter 13 Trustee of payments made to Bank of America, N.A. in excess of the amounts provided for in the confirmed plan in this case. An additional $3,002.91 has previously been disgorged by Bank of America, N.A. in the form of a payment made by Specialized Loan Servicing, as the loan servicing agent for the Bank, to the Chapter 13 Trustee by Check Number 330147 (copy of check filed as Exhibit A, Dckt. 260).
>
> **IT IS FURTHER ORDERED** the Chapter 13 Trustee shall hold the disgorged monies until September 15, 2014, and if no party in interest (including the Debtors and Bank of America, N.A.) in this case has filed an appropriate motion or adversary proceeding asserting the right to the monies or disbursement through the Chapter 13 Plan by that date, the Chapter 13 Trustee shall disburse the $15,017.46 paid by Bank of America, N.A. and the $3,002.91 paid by Specialized Loan Servicing for Bank of American, N.A. in this case, through the Chapter 13 Plan. This $18,017.46 in disgorged monies are in addition to all other plan payments required to be made the Debtors under the confirmed plan.

47. 14-24254-E-13 REBECCA SCHLOSSAREK **OBJECTION TO CONFIRMATION OF**
DPC-1 James Andrews **PLAN BY DAVID CUSICK**
6-11-14 [36]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

The case having previously been dismissed, the Objection is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation 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 Objection is dismissed as moot, the case having been dismissed.

48. 14-24955-E-13 DPC-1 ANTOINETTE TRIGUEIRO Sally C. Gonzales

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-18-14 [31]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor failed to appear and be examined at the First Meeting of Creditors held on June 12, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343 and the Debtor has not presented any evidence to the Court as to why she failed to appear. The Meeting was continued to July 17, 2014 at 10:30 am.

Trustee also argues that while the plan proposes to pay the attorney $500.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation

of Attorney for Debtors appears to list in item #7 that the attorney services do not include some services required under LBR 2016-l(c), such as relief from stay actions. The Trustee believes that the Attorney is effectively opting out of 2016(c)(l) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

Lastly, the Trustee states the Debtor has not filed her tax returns during the 4-year period preceding the filing of the Petition. The Internal Revenue Service filed a claim on May 21, 2014 (Claim #1), which shows that no returns were filed for 2010, 2011, 2012 and 2013. The Franchise Tax Board filed a claim on June 17,2014 (Claim #2), which shows no returns were filed for 2010, 2011 and 2012. See 11 U.S.C. §§ 1308 & 1325(a)(9).

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.

49. 10-48657-E-13 JAIME LEE
GW-4 Gerald L. White

MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY
6-19-14 [102]

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).

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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Law Offices of Gerald L. White, the Attorney ("Applicant") for Jamie Sue Lee, Debtor, makes a Second Interim and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period January 16, 2014 through June 6, 2014.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to

discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

However, since the requested fees are only $1,940, and substantial information has been provided in the Declaration provided by Counsel, the court will grant the motion.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including selling the Debtor's former residence. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gerald White	6.2	$300.00	$1,860.00
Total Fees For Period of Application			$1,860.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid

First Interim	$3,862.50	$3,862.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$3,862.50	

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $1,860.00 and prior Interim Fees in the amount of $3,862.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $80.00 pursuant to this applicant. Pursuant to prior interim applications, the court has allowed costs of $274.00.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
NSF check fees	$25.00	$50.00
Telephonic Court Appearance Fee	$30.00	$30.00
Total Costs Requested in Application		$80.00

This court does not generally allow the recovery of court call expenses on the theory that generally counsel use the Court Call service to make themselves more competitive in a larger geographic area. For those counsel, the Court Call service is akin to having phones in the office, legal resources, a desk and chair. The court disallows $30.00 of the requested costs.

The Second Interim Costs in the amount of $50.00 and prior Interim Costs in the amount of $274.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees $1,860.00
Costs and Expenses $ 50.00

pursuant to this Application and prior interim fees of $3,862.50 and interim costs of $274.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Law Offices of Gerald L. White ("Applicant"), Attorney for 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 Law Offices of Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Gerald L. White, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $ 1,860.00
> Expenses in the amount of $ 50.00,
>
> **IT IS FURTHER ORDERED** that the costs of $50.00 are not allowed by the court.
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $3,862.50 and costs of $274.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

50. 11-42659-E-13 GARAY/KAREN HARPER — MOTION TO EMPLOY
SDB-1 W. Scott de Bie — TRAVIS G. BLACK, OTHER PROFESSIONAL
6-10-14 [45]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ Counsel is granted.

Debtor Karen Harper seeks to approve fees and employ counsel Travis G. Black, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of counsel to pursue her claim (Karen Harper) for damages regarding personal injuries received from a slip and fall incident in South Lake Tahoe and Camp Richardson Resort. Debtor executed a Contingency Fee Agreement with Mr. Black in which she agreed to pay 33 and 1/3% of the recovery if resolved prior to a complaint being filed and 40% thereafter, with Mr. Black agreeing to advance any costs against such recovery. Debtor states that such action is still pending before the El Dorado County Superior Court under case number PC20110244.

Travis G. Black, testifies that his practice focuses on personal injury cases. Mr. Black testifies he, his firm, or proposed joint special counsel do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

TRUSTEE'S RESPONSE

Trustee states he does not oppose the employment and fees for Mr. Black, but notes that the personal injury lawsuits were filed in May 2011 and these motions were not filed until June 2014, more than two and a half years after the bankruptcy case was filed without explanation for delay. Trustee notes that the Debtor failed to disclose the lawsuits on the Statement of Financial Affairs. The Trustee requests that any non-exempt equity be paid into the plan as Schedule B and C list an unknown value for the lawsuits.

DEBTOR'S REPLY

Debtors reply, stating that they delayed the filing for appointment of special counsel because little activity was had on the claim and Debtors were unsure until recently that they would pursue the matter with special counsel. Debtors state that they were aware that a claim was pending at the time the petition was filed and thus disclosed it on Schedule B, they did not know a formal complaint had been filed, which is why it did not appear on the Statement of Financial Affairs. Debtors agree that any non-exempt proceeds received from the action during their plan will be provided to the Trustee.

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Travis G. Black as counsel for the Debtor and the estate on the terms and conditions set forth in the Declaration provided by Counsel, which states payment of 33 and 1/3% of the

recovery if resolved prior to a complaint being filed and 40% thereafter, with Mr. Black agreeing to advance any costs against such recovery. Dckt. 47. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ 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 Employ is granted and the Debtor Trustee is authorized to employ Travis G. Black for the Debtor Karen Harper and the estate on the terms and conditions set forth in the Declaration provided by Counsel, which states payment of 33 and 1/3% of the recovery if resolved prior to a complaint being filed and 40% thereafter, with Mr. Black agreeing to advance any costs against such recovery. Dckt. 47.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

51. 11-42659-E-13 GARAY/KAREN HARPER — MOTION TO EMPLOY JOSEPH B. WEINBERGER, OTHER PROFESSIONAL
SDB-2 W. Scott de Bie — 6-10-14 [50]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ Counsel is granted.

Debtor Garay Harper seeks to approve fees and employ counsel Joseph B. Weinberger, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of counsel to pursue his claim (Garay Harper) for loss of consortium which arose from personal injuries received from a slip and fall incident in South Lake Tahoe and Camp Richardson Resort. Debtor executed a Contingency Fee Agreement with Mr. Weinberger in which he agreed to pay 33 and 1/3% of the recovery if resolved prior to a complaint being filed and 40% thereafter, with Mr. Weinberger agreeing to advance any costs against such recovery. Debtor states that such action is still pending before the El Dorado County Superior Court under case number PC20110244.

Joseph B. Weinberger, testifies that his practice focuses on personal injury cases. Mr. Black testifies he, his firm, or proposed joint special counsel do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

TRUSTEE'S RESPONSE

Trustee states he does not oppose the employment and fees for Mr. Weinberger, but notes that the personal injury lawsuits were filed in May 2011 and these motions were not filed until June 2014, more than two and a half years after the bankruptcy case was filed without explanation for delay. Trustee notes that the Debtor failed to disclose the lawsuits on the Statement of Financial Affairs. The Trustee requests that any non-exempt equity be paid into the plan as Schedule B and C list an unknown value for the lawsuits.

DEBTOR'S REPLY

Debtors reply, stating that they delayed the filing for appointment of special counsel because little activity was had on the claim and Debtors were unsure until recently that they would pursue the matter with special counsel. Debtors state that they were aware that a claim was pending at the

time the petition was filed and thus disclosed it on Schedule B, they did not know a formal complaint had been filed, which is why it did not appear on the Statement of Financial Affairs. Debtors agree that any non-exempt proceeds received from the action during their plan will be provided to the Trustee.

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Joseph B. Weinberger as counsel for the Debtor and the estate on the terms and conditions set forth in the Declaration provided by Counsel, which states payment of 33 and 1/3% of the recovery if resolved prior to a complaint being filed and 40% thereafter, with Mr. Weinberger agreeing to advance any costs against such recovery. Dckt. 52. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ 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 Employ is granted and the Debtor is authorized to employ Joseph B. Weinberger as counsel for Debtor Garay Harper and the estate on the terms and conditions set forth in the Declaration provided by Counsel, which states payment of 33 and 1/3% of the recovery if resolved prior to a complaint being filed and

40% thereafter, with Mr. Weinberger agreeing to advance any costs against such recovery. Dckt. 52..

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

52. 11-35060-E-13 ANTONETTE TIN
RK-6 Richard Kwun

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BOWMAN AND ASSOCIATES, APC FOR RICHARD KWUN, DEBTOR'S ATTORNEY
6-23-14 [130]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 23, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is granted.

Richard Kwun of Bowman and Associates, Counsel for Debtor, seeks additional attorney fees in the amount of $2,280.00 in fees and $17.48 in expenses. 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. Case Administration: Counsel spent .8 hours in this category for total fees in the amount of $192.00. Counsel communicated with the Debtor and reviewed claims.

2. Hearings: Counsel spent 2.3 hours in this category for total fees in the amount of $552.00. Counsel reviewed tentative and final ruling and appeared in court.

3. Plan Modification: Counsel spent 4.2 hours in this category for total fees in the amount of $1,008.00. Counsel prepared two modified plans, including a trial home modification with Debtor.

4. Claim Objection: Counsel spent 1.2 hours in this category for total fees in the amount of $288.00. Counsel objected to a Notice in which Creditor sought $150.00 in fees.

5. Fee Application: Counsel spent 1.1 hours in this category for total fees in the amount of $264.00. Counsel prepared this application.

TRUSTEE'S RESPONSE

Trustee notes that the tables provided by Debtor appear to reflect incorrect totals. Table 2 Hearings, shows 3.6 total hours and should either be 3.3 as the sum of all entries or 2.3 if only the sum of charged entries. Table 3 Plan Modifications shows 4.2 total hours and should either be 7 as the sum of all entries or 5 if only the sum of charged entries.

Trustee notes that Debtor's Counsel seeks a reduced 9.6 hours of compensation, which appears to exclude the 0.8 hours claimed under Case Administration. The Trustee does not oppose the requested hours, where counsel has explicitly waived three hours, but seeks to clarify if the additional 0.8 hours is also waived.

DEBTOR'S RESPONSE

Debtor responds that the correct amount for Table 3 is 5.1 hours, but counsel forebears claiming .9 hours for a total of 4.2 hours billed.

DISCUSSION

The hourly rates for the fees billed in this case are $240.00/hour for counsel for 12.8 hours of unanticipated and substantial work, but Counsel seeks 9.5 hours for a total of $2,280.00. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. Counsel also seeks additional costs in the amount of $17.48 for postage and copies. The total attorneys' fees in the amount of $2,280.00 and costs in the amount of $17.48 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 Richard Kwun of Bowman and Associates, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Richard Kwun of Bowman and Associates, Counsel for Debtor
Applicant's Fees Allowed in the amount of $ 2,280.00
Applicant's Costs Allowed in the amount of $ 17.48.

53. 13-29462-E-13 JOHN LONG **MOTION TO MODIFY PLAN**
DPR-2 David P. Ritzinger **6-2-14 [59]**

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 June 2, 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.

54. 14-21964-E-13 JVP-7 DAVE/MICHELLE SMITH James V. Phelps MOTION TO CONFIRM PLAN 6-3-14 [86]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

Debtor seeks to Confirm an Amended Plan. However, on July 26, 2014, the Debtors filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on July 16, 2014. *McFadden*, 37 B.R. at 521.

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 as moot.

55. 10-26265-E-13 WSS-4 | **PABLO/ROBIN PADILLA** / **W. Steven Shumway** | **MOTION TO APPROVE LOAN MODIFICATION** / **6-16-14 [66]**

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Pablo and Robin Padilla ("Debtor") seeks court approval for Debtor to incur post-petition credit. Deutsche Bank National Trust Company ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,471.82 a month to $2,195.94 a month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 2% for the next five years, 3% for year six, and 4.25% thereafter.

The Motion is supported by the Declaration of Robin Padilla. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Pablo and Robin Padilla having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Pablo Padilla and Robin Padilla ("Debtors") to amend the terms of the loan with Deutsche Bank National Trust Company, which is secured by the real property commonly known as 1339 Longfellow Circle, Roseville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 69.

56. 14-21066-E-13 WALTER/PATTY KNOWLES **CONTINUED MOTION TO VALUE**
DCR-1 Darrel C. Rumley **COLLATERAL OF LITTON LOAN SERVICING**
2-25-14 [15]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required. 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 February 25, 2014. By the court's calculation, 59 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The court's decision is to continue the hearing on the Motion to Value the Secured Claim of Litton Loan Servicing to XXXX at XXXXX.

The court continued the hearing on this matter from May 20, 2014, to this hearing date to allow Debtors additional time to produce evidence identifying and showing the true creditor who holds the second deed of trust in Debtors' real property.

The court previously continued the hearing on this matter once before, from April 22, 2014 to the May 20, 2014 hearing date, to allow Debtors time to provide evidence showing the identity of the true creditor and party to the subject loan modification agreement. Civil Minutes, Dckt. No. 40.

REVIEW OF MOTION

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6461 Tupelo Dr., Citrus Heights, California. The Debtor seeks to value the property at a fair market value of $130,000.00 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 $162,963.00. "Creditor" Litton Loan Servicing's second deed of trust secures a loan with a balance of approximately $60,234.00.

Debtors seeks to value the collateral of "Litton Loan Servicing." However, it has been repeatedly represented in this court that loan servicing companies including Litton Loan Servicing are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is "held by Litton Loan Servicing," and that the first deed of trust in the subject property is held by "Ocwen Loan Servicing" indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claims secured by the first and second deeds of trust.

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 for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Litton Loan Servicing. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

Debtors' exhibits only consist of their filed Schedule A, which does not list the name of the creditor holding a secured claim in Debtors' residence, and an email from a realtor pricing the subject property at $130,000, based on a sales comparison analysis conducted to draw up an estimation of value for Debtors' home. Dckt. No. 18.

No assignment or transfer of claim appears on the docket transferring any interest to Litton Loan Servicing. The court is not certain how Debtors can name Litton Loan Servicing as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court continued the hearing on this Motion from April 22, 2014 to this hearing date. Dckt. No. 33. A review of the docket shows that nothing further has been filed in this matter. Debtors have not produced additional evidence identifying and showing the true creditor who holds the second deed of Debtors' real property.

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

APPLICATION FOR ORDER OF EXAMINATION

Debtors have filed an application for an order of examination under Federal Rule of Bankruptcy Procedure 2004(a), requiring the appearance for examination of a representative of Ocwen Loan Servicing, LLC. Dckt. No. 46. The Debtors state that according to the information obtained from the Mortgage Electronic Registration Systems, In. (MERS), Ocwen Loan Servicing, LLC is the servicing agent for the holder of a second deed of trust secured by the Debtors' residence.

Debtors state that Debtor's counsel has contacted Ocwen Loan Servicing, LLC, on numerous occasions for the past several weeks to obtain information as to who, or which entity, is the owner (investor) of the second deed of trust. Ocwen indicated that the account for the loan, 7095930058, was transferred to Nationwide Credit, Inc ("Nationwide") for collection action, and therefore, and that Ocwen Loan Servicing, LLC subsequently did not give counsel any information regarding the loan.

Debtors' counsel then contacted Nationwide. Nationwide requested information regarding the loan and supplied to counsel "incorrect information" on the holder of the loan. Nationwide reported that the original note that was executed by Ownit Mortgage Solutions, Inc., a California corporation that is no longer in existence. Debtors' counsel engaged in further efforts to obtain current information from both Ocwen and Nationwide on the owner of the subject loan; the Application states that neither entity has provided the current information to counsel to be able to obtain the current owner, investor information.

Debtors state that they believed that it would be appropriate to give notice to Litton Loan Servicing, Inc. of the motion to value the claim on their residence, since Litton Loan Servicing is the entity which had been the servicing agent for the loan and where Debtors had made all previous payments. Debtors state that they were never aware that Ocwen had the servicing rights for the loan.

Debtors should be aware, however, that the misidentification of creditors for purposes of § 506(a) motions will automatically be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights. In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

In their application, the Debtors here assert that they need the information from Ocwen to be able to re-file a motion to value their property, namely their residence located at 6461 Tupelo Drive, Citrus Heights, California, so that they can give proper notice for their Motion to Value.

EXAMINATION

Federal Rule of Bankruptcy Procedure 2004 states that on the motion of any party in interest, the court may order the examination of any entity. As the reported current servicing agent for the holder of the second deed of trust secured by Debtors' residence, Ocwen Loan Servicing, LLC is a party in interest in this matter. It appears that Debtors and their attorney have been stonewalled by Nationwide Credit and Ocwen Loan Servicing, LLC, while trying to collect information on the identity of the actual owner of the loan secured by the Debtors' property.

The Debtors and their counsel having made multiple efforts to ascertain the identity of the actual owner of the obligation secured by the second deed of trust against the Debtors' real property, the court will order the examination of representatives of Ocwen Loan Servicing, LLC, to appear and respond to this issue of identity of the creditor and the loan servicer.

The court will issue an examination order, requiring agents of Ocwen Loan Servicing to appear before the court, produce the necessary documents to establish the real party in possession of the secured claim that Debtors seek to value pursuant to 11 U.S.C. § 506.

The instant Motion to Value will be continued to allow Debtors to determine the identity of the actual holder of the obligation secured by the second deed of trust against Debtors' residence.

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 Mark A. And Patricia T. Harland, "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 continued to XXXX at XXXXXX.

57. 14-21066-E-13 WALTER/PATTY KNOWLES MOTION FOR EXAMINATION
DCR-2 Darrel C. Rumley 7-3-14 [46]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Ocwen Loan Servicing, LLC, the CEO of Ocwen Loan Servicing, LLC, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion for a Order Authorizing a 2004 Examination is granted.

Debtors have filed an application for an order of examination under Federal Rule of Bankruptcy Procedure 2004(a), requiring the appearance for examination of a representative of Ocwen Loan Servicing, LLC. Dckt. No. 46. As stated in this Motion and additional representations made by the Debtors' attorney in court, the Debtors and their counsel have been trying to determine the true creditor and holder of the claim secured by the second deed of trust on the Debtors' residence, which Debtors seek to value in their Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1.

The Motion to Value has been continued multiple times to permit Debtors to determine the actual holder of the claim, as this court has stated previously that this court will not issue "maybe effective, maybe not

effective" orders that will affect the rights and responsibilities of loan servicing companies, lenders, transferees, and nominees of actual creditors that have been incorrectly identified as the creditors of certain claims.

Here, the Debtors have been communicating with Litton Loan Servicing Company, the entity that the believed was the servicing agent for the holder of the claim they seek to value for the purposes of their Chapter 13 Plan. The Debtors state that according to the information obtained from the Mortgage Electronic Registration Systems, In. (MERS), Ocwen Loan Servicing, LLC is the servicing agent for the holder of a second deed of trust secured by the Debtors' residence.

Debtors state that Debtor's counsel contacted Ocwen Loan Servicing, LLC, on numerous occasions for the past several weeks to obtain information as to who, or which entity, is the owner (investor) of the second deed of trust. Ocwen Loan Servicing, LLC representatives indicated that the account for the loan, 7095930058, was transferred to Nationwide Credit, Inc ("Nationwide") for collection action, and therefore, and that Ocwen Loan Servicing, LLC subsequently did not give counsel any information regarding the loan.

Debtors' counsel then contacted Nationwide. Nationwide requested information regarding the loan and supplied to counsel "incorrect information" on the holder of the loan. Nationwide reported that the original note that was executed by Ownit Mortgage Solutions, Inc., a California corporation that is no longer in existence. Debtors' counsel engaged in further efforts to obtain current information from both Ocwen and Nationwide on the owner of the subject loan; the Application states that neither entity has provided the current information to counsel to be able to obtain the current owner, investor information.

Debtors state that they believed that it would be appropriate to give notice to Litton Loan Servicing, Inc. of the motion to value the claim on their residence, since Litton Loan Servicing is the entity which had been the servicing agent for the loan and where Debtors had made all previous payments. Debtors state that they were never aware that Ocwen had the servicing rights for the loan.

Debtors must keep in mind, however, that the misidentification of creditors for purposes of § 506(a) motions will automatically be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights. In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

In their application, the Debtors assert that they need the information from Ocwen to be able to re-file a motion to value their property, namely their residence located at 6461 Tupelo Drive, Citrus Heights, California, so that they can give proper notice for their Motion to Value the property and the secured claim secured by the deed of trust on the property.

DISCUSSION

Federal Rule of Bankruptcy Procedure 2004 states that on the motion of any party in interest, the court may order the examination of any entity. As the reported current servicing agent for the holder of the second deed of trust secured by Debtors' residence, Ocwen Loan Servicing, LLC is a party in interest in this matter. It appears that Debtors and their attorney have been stonewalled by Nationwide Credit and Ocwen Loan Servicing, LLC, while trying to collect information on the identity of the actual owner of the loan secured by the Debtors' property.

The Debtors and their counsel having made multiple efforts to ascertain the identity of the actual owner of the obligation secured by the second deed of trust against the Debtors' real property, the court will order the examination of representatives of Ocwen Loan Servicing, LLC, to appear and respond to this issue of identity of the creditor and the loan servicer.

The proper solution is to call the agents of Ocwen Loan Servicing, LLC, to appear before the court to address this issue for the consumer debtors who have attempted to collect information vital to their efforts to value the secured claim of the creditor holding the underlying obligation secured by the deed of trust against their residence. The Debtors will have the opportunity to subpoena the servicer to appear and produce the necessary documents to establish the real party in possession of the secured claim that Debtors seek to value pursuant to 11 U.S.C. § 506.

The court will issue an examination order, requiring agents of Ocwen Loan Servicing to appear before the court, produce the necessary documents to establish the real party in possession of the secured claim that Debtors seek to value pursuant to 11 U.S.C. § 506.

The court shall issue an examination order.

58. 14-21066-E-13 **WALTER/PATTY KNOWLES** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
TSB-1 **Darrel C. Rumley** **3-13-14 [28]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's decision is to continue the hearing on the Objection to XXXX at XXXXX, 2014.

The court decided to continue the hearing on this matter from April 8, 2014, so that the matter could be conjunction with the hearing on the motions to value secured claims. Civil Minutes, Dckt. No. 32. The hearing was again continued from April 22, 2014, because the Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, was continued to his hearing date. Civil Minutes, Dckt. No. 36.

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that the Plan relies on the pending Motions to Value the Secured Claim of

Golden One Credit Union and Litton Loan Servicing, which are set for hearing on April 22, 2014.

On April 22, the court granted the Motion to Value the Secured Claim of Golden One Credit Union, on a second deed of trust recorded against Debtors' 2009 Chevrolet Malibu Hybrid.

The Debtors' Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, which remains the pending Motion to Value in Debtors' case, has been continued to allow the court to examine agents of Ocwen Loan Servicing, LLC pursuant to Federal Rule of Bankruptcy Procedure 2004(a), so that the Debtors and the court may ascertain the identity of the owner of the claim secured by the second deed of trust against Debtors' property.

The Trustee's Objection to plan will be continued so that Trustee's remaining Objection can be heard after the Debtors' Motion to Value the Secured Claim of Litton Loan Servicing, DCR-1, has been resolved.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is continued to XXXX at XXXXX.

59. 14-24266-E-13 MAYLENE RAMAGOZA — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
DPC-1 Pro Se — **6-11-14 [32]**

Final Ruling: The case having previously been dismissed, the Objection 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 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 Objection is denied as moot, the case having already been dismissed.

60. 11-25267-E-13 MIKE KENDRICK
DPC-1 Douglas B. Jacobs

TRUSTEE'S FINAL REPORT AND ACCOUNT
6-5-14 [33]

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

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

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

Local Rule 9014-1(f)(2) - Opposition Filed

The Objection of Don Slavich was filed with the court as an *ex parte* communication on June 30, 2014. Dckt. No. 30. The Trustee has properly scheduled a hearing on this matter, as Federal Rule of Bankruptcy Procedure prohibits the any party in interest from engaging in *ex parte* meetings and communications with the court concerning matters affecting a particular case or proceeding. Federal Rule of Bankruptcy Procedure 9003. This rule is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created.

The Trustee issued a Notice of the Hearing on the Objection on July 2, 2014. Dckt. No. 39. The Proof of Service states that the Trustee's Response to the Creditor's Objection to the Trustee's Final Report and Account, and Creditor's Objection and Declaration in Support Thereof were served on the Debtor, Debtor's Attorney, the Creditor, and Office of the United States Trustee on July 2, 2014. Dckt. No. 42. By the court's calculation, 20 days' notice was provided.

The Trustee's Final Report and Account, and Objection to the Trustee's Final Report and Account were 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 Objection is overruled.

On June 5, 2014, the Chapter 13 Trustee filed a Final Report and Account of the administration of the estate of Debtor Mike Monroe Kendrick, Jr., pursuant to 11 U.S.C. § 1302(b)(1). The Report states, among other things, that the total value of assets exempted was $16,820.00, the amount of unsecured claims discharged without payment was $128,127.44, and that all checks distributed by the trustee relating to this case have cleared the bank. Dckt. No. 33.

On June 30, 2014, an individual identifying himself as the Landlord of the Debtor, filed a letter addressed to this court. The letter, filed by Don Slavich, states that Debtor is the lessee of Mr. Slavich, and that the address as listed in the lease executed with the Debtor is 848 57th Street, Sacramento, California 95819. Dckt. No. 38.

Mr. Slavich states that he received no information on the bankruptcy case in a timely manner, and that all information sent to Mr. Slavich was sent to an address furnished by the Debtor. Mr. Slavich states that he believes that the address was that of the "leasing agents." Mr. Slavich asks the court whether he has any recourse, and whether he can be included in a distribution.

RESPONSE BY THE TRUSTEE

The Trustee responds to Mr. Slavich's Objection with the following:

1. Lack of Notice: The Creditor Don Slavich objects, "I Received No Information on Above Case in a Timely Period." The Creditor gives his address as 848 57th Street, Sacramento, California 95819. Creditor also states that he was the landlord of the lessee in the case, and believes that the information was sent to an addressing which he believes belongs to the leasing agent.

   The Creditor was listed on Schedule G with an address of "Don Slavich 4201 H Street Sacramento CA 95819," Dckt. No. 1, Page 26. This is also the address on the Master Address List, Dckt. No. 3.

   Trustee agrees that the record does not show any information sent to the address now given by the creditor. While the creditor eventually received some notice, as they have filed a change of address and an objection to the Trustee's Final Report and Account, whether this notice was adequate under due process to allow their claim to be discharged in the bankruptcy is "beyond the scope of the Trustee's Final Report and Account." The Trustee's Final Report and Account is a report of receipts and disbursements made in the case, and controlled normally by the confirmed plan.

2. Plan Provisions for Leases. The Plan in the case did not assume the lease, Dckt. No. 5 at 4, and provided that any lease not assumed was

rejected. The plan was filed on March 2, 2011, and confirmed on May 8, 2011.

3. Need for Claim to be Paid. The plan also provided a proof of claim had to be timely filed to be paid pursuant to the plan, Dckt. No. 5, Page 2, Section 3.01. No proof of claim was filed by the creditor, so no disbursements were made the creditor.

4. Plan Disbursements and Receipts. If a timely claim was filed by the creditor, they might have shared in the $222.48 disbursed to unsecured creditors--unsecured filed and allowed claims totaled $56,041.07. The Debtor's attorney was paid $3,500.00; $166.24 was paid to the Trustee, and $9.50 was refunded to the Debtor as an overpayment under the plan where the Debtor paid $3,898.22 where the plan called for $3,888.72.

The Objection is not the Trustee's Final Report, but that the Creditor believes he was excluded from the bankruptcy case. Creditor may exercise his rights as appropriate. But that is not a reason for not approving the Trustee's Final Report.

The Objection is overruled.

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

The Objection to Confirmation 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 Objection is overruled.

61. 13-27567-E-13 DEBORAH DECKER — MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria — 6-11-14 [41]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2014. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed modified plan for two reasons.

First, the Debtor does not provide a reason for the modified plan. The court cannot determine if the plan is proposed in good faith under 11 U.S.C. § 1325(a)(3), unless the reason for the plan is disclosed.

Second, Debtor has paid ahead $1,425.00 under the proposed plan. Debtor's modified plan proposes plan payments of $3,445.00 through May 2014, then beginning on June 25, 2014 monthly plan payments shall be $375.00 for the remaining 47 months of 60 month plan. Under the modified plan, Debtor would need to have paid the Trustee through June 2014 a total of $3,820.00. The Trustee's records reflect that the Debtor has actualy paid a total of $5,245.00, a difference of $1,425.00.

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

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

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

62. 14-24867-E-13 MIGUEL GONZALEZ
DPC-1 Scott A. CoBen

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
6-18-14 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan for two reasons. First, the Trustee argues that the Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor received a federal refund of $9,517.00 for tax year 2013. No future tax refund income is projected on Schedule I. While the Trustee has received and reviewed the tax returns, the Trustee has not filed the returns as Exhibits as the Trustee believes that may not be necessary, but will submit the returns if requested or required.

Debtor received $9,517.00 in a federal tax refund based on their total tax payments of $10,198.00 where only $681.00 tax was due. The Debtor also received a state refund in the amount of $2,683.00 for the 2013 tax year. Of the $9,517.00 refund, $5,000.00 was from Child Tax Credit, since the Debtor's dependents as reported on Schedule I are ages 4, 7, 10, 10, and 12, and the fact that the Debtor is retaining his real property, it appears that their tax deductions in the future are likely to remain the same or similar. If the Debtor included this income in their monthly income calculation, dividing the income monthly throughout the year, he would have at least $1,016.66 per month in additional income. Continued tax refunds appear likely and Debtor's income should be adjusted to either reflect the tax refund income or a lower tax expense.

Second, Trustee asserts that the Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value the Secured Claim of Wells Fargo Bank, which is set for hearing on June 24, 2014. The Motion to Value, SAC-1, was granted without oral argument on June 24, 2014, thus resolving this part of the Trustee's Objection. Civil Minutes, Dckt. No. 26.

RESPONSE BY DEBTOR

On the issue of the Debtor not including his tax refunds into his monthly income and properly adjusting his tax expenses, Debtor states that this issue has been resolved with the Office of the Chapter 13 Trustee.

The Trustee objects to confirmation of the plan on the basis that the plan is not Debtor’s best effort, because it appears he is over-withholding on his payroll taxes, resulting in large state and federal refunds each year. The response to Trustee’s Objection, Dckt. No. 24, states that Counsel for Debtor spoke with the Office of the Chapter 13 Trustee and the Office and Debtor’s attorney agreed that this objection would be resolved by amending the plan in the order confirming the plan to state as follows:

> “Throughout the commitment period of the plan, Debtor shall provide the Trustee with a copy of his Federal and State income tax returns and turn over his Federal and State income tax refunds.”

The parties having resolved Trustee’s remaining objection to the proposed plan, the objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 8, 2014 with an amendment stating that

> "Throughout the commitment period of the plan, Debtor shall provide the Trustee with a copy of his Federal and State income tax returns and turn over his Federal and State income tax refunds,"

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.

63. 14-26567-E-13 SAMUEL TAPIA **MOTION TO EXTEND AUTOMATIC STAY**
JGD-1 John G. Downing **7-8-14 [16]**

Tentative Ruling: The Motion to Extend the 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.

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend 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 Motion to Extend the Automatic Stay is granted.

The Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (Case No. 13-35033) was filed on November 26, 2014 and dismissed on May 28, 2014, after the court granted Trustee's Motion to Dismiss the case on the basis that Debtor was $1,190.00 delinquent in plan payments.

In his Motion to Dismiss, the Trustee also noted that the Debtor did not file a Plan or a Motion to Confirm a Plan following the denial of confirmation to Debtors. *See* Order, Bankr. E.D. Cal. No. 2013-35033, Dckt. 26, May 28, 2014. Because of the dismissal of the Debtor's prior case, the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition pursuant to 11 U.S.C. § 362(c)(3)(A).

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 June 24, 2014. The Debtor filed a Chapter 13 Plan concurrently with the bankruptcy petition, and assert that the plan is confirmable and likely to complete given the Debtor's income and expenses. The current plan provides for payment of the first deed of trust and arrears, a second deed of trust, and attorney fees. The payments required are set at $1,650.00 per month for thirty six 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 DEBTOR FOR RELIEF

The Motion states that Debtor had the ability to make the plan payments, but that Debtor became confused about the amounts due and did not understand how to make the plan payments. Debtor states that he intends to correct this problem by using the automated TFS Bill Pay Service in his new case. Debtor then asserts that there is good cause for the extension of the stay, and this cause is established in the Declaration of Debtor. Dckt. No. 18.

In restating the factual contentions contained in the Motion, the Debtor testifies that he had the ability to make plan payments in his prior bankruptcy case. He acknowledges that the case was dismissed due to his failure to make payments, but was confused about the amounts and how to make the payments. Debtor states that it is intention to use the automated TFS Bill Pay Service in this current case, which should eliminate this problem and allow him to "stay on track" with the required payments in this case. ¶ 3, Dckt. No. 18.

Regarding the second issue raised in the analysis under *Elliot-Cook,* conducted to determine whether a case was filed in good faith under § 362(c)(3) and *Elliot-Cook*, 357 B.R. at 814-815, Debtor merely asserts that he can now make the payments called for under his proposed plans because he understands the online Trustee Payment and records system for Chapter 13 participants. The assumption is that Debtor did not understand how to make the required payments before, which resulted in the Debtor's delinquency in plan payments. In purporting to rebut the presumption of bad faith in this case, Debtor asserts that he has the ability to and will make all necessary payments, so that his new plan and current case will succeed.

These statements do, however, raise credibility issues for the Debtor and Debtor's counsel. The Debtor never disclosed his troubles with making the required plan payments in responding Trustee's statements regarding Debtor's delinquency in the Trustee's Motion to Dismiss and Objection to the First Amended Plan. Debtor's previous case was dismissed on May 28, 2014, after the court issued an order dismissing the case for unreasonable delay that was prejudicial to creditors, and for Debtor's failure to make plan payments. The Debtor did not respond to Trustee's arguments that the case should be dismissed for lack of payments and that Debtor inexplicably delayed in setting his Chapter 13 plan for confirmation.

Rather than stating grounds, the Debtor merely provides the court with his legal conclusion. The Debtor merely states that good cause exists for the extension of the stay, asserting previously unstated reasons for why he is now able to perform his plan--after Debtor failed to carry out his obligations in his previous 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 Debtor and his counsel (who was the Debtor's counsel in the prior case) must carefully document why and how his testimony 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.

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 Debtor 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.

64. 11-20868-E-13 ACW-2 — WAYNE WILKINSON AND DENISE ARMENDARIZ — CONTINUED MOTION TO APPROVE LOAN MODIFICATION 5-22-14 [169]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

On July 15, 2014, the court approved a stipulation between Debtors Wayne Roy Wilkinson and Denise Anette Armendariz, and Ocwen Loan Servicing, LLC, to continue the hearing on the motion to approve the loan modification. The hearing on the Debtors' Motion to Approve the Loan Modification was accordingly continued to August 5, 2014 at 3:00 pm. **Order, Dckt. No. 189.**

65. 12-38970-E-13 ERIK NEESE
CA-1 Michael David Croddy

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY AND ASSOCIATES, P.C. DEBTOR'S ATTORNEY
6-22-14 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2014. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Michael Croddy, the Attorney ("Applicant," or "Counsel") for Debtor Erik Neese ("Client) in this case, makes a Final Request for Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of August 21, 2012 to June 20, 2013.

Applicant provides a task billing analysis in his Declaration, Dckt. No. 28, and supporting evidence for the services provided. Applicant attaches the fee retainer agreement previously entered between Applicant and the Client, a pre-petition billing statement in which Debtor acknowledges that he understands and authorizes the payment of attorney fees and expenses, a report of time and expenses, and the resumes of the attorneys who worked on this case. Dckt. No. 29.

In the Declaration of Michael Croddy filed in support of the Motion, Dckt. No. 26, Applicant states that he spent 2.70 hours in meeting and consulting with the Debtor in the preparation of the case. Applicant states that spent 4.00 hours on data acquisition and input (and that the Legal Assistant spent 6.20 hours in this task category), that the Applicant spent 1.00 hour in attending the 11 U.S.C. § 341 meeting of creditors, and 2.30 hours on preparing and filing a Motion for Attorney's fees.

Applicant states that prior to the filing of this case, Applicant received $2,500.00 from a fee retainer agreement entered between the Debtor and Applicant. Applicant states that the fees and costs previously allowed are not sufficient to fully compensate him for the services rendered.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the confirmation of a Chapter 13 Plan resulting in disbursements to the secured creditors holding claims in Debtor’s vehicle and two deeds of trust against Debtor’s real property. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Croddy, Senior Attorney	10.00	$375.00	$3,750.00
Georgina Wells, Paralegal/ Legal Assistant	6.20	$125.00	$775.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,525.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final fees in the amount of $4,525.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 Case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $353.58 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Costs for Mailed Motion for Attorney Fees		$72.58
Scanned and eFiled Petition and Documents		$281.00
Total Costs Requested in Application		$353.58

Costs in the amount of $353.58 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be

paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$ 4,525.00
Costs and Expenses	$ 353.58

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case. After application of the $2,219.00 and $281.00 already paid to counsel in the retainer and filing fees, a total of $2,378.58 in compensation and costs is granted by this ruling.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael Croddy ("Applicant"), Attorney for 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 Michael Croddy is allowed the following fees and expenses as a professional of the Estate:
>
> Michael Croddy, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $4,525.00
> Expenses in the amount of $ 353.58,
>
> After application of the $2,219.00 and $281.00 already paid to counsel in the retainer and filing fees, a total of $2,378.58 in compensation and costs is granted in this ruling.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

66. 14-25670-E-13 CHARLES/TAMMY RAETZ
CAH-1 C. Anthony Hughes

MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION
6-6-14 [12]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Sierra Central Credit Union, "Creditor," is granted.

The Motion to Value filed by Charles and Tammy Raetz, "Debtors" to value the secured claim of "Creditor" is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 5025 Camille Ct, Sacramento, California, "Property." Debtors seek to value the Property at a fair market value of $150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $167,585.00. Creditor's second deed of trust secures a claim with a balance of approximately $36,396.82.

Creditor's Opposition

The respondent Creditor, Sierra Central Credit Union, identifies itself as the holder of a promissory note secured by a first deed of trust against the subject property in the sum of approximately $167,585.00, and a holder of a promissory note secured by a second deed of trust against the subject property in the sum of approximately $36,396.82. Creditor argues that Debtors have undervalued the subject real property.

Creditor argues that the Debtors' valuation of the property providing security for the two Sierra Central Credit Union liens is based only upon the opinion of the debtors themselves and not on any other documentary or empirical evidence. Creditor accuses Debtors of presenting a motion is devoid of any evidence that Debtors posses any education, certification or experience in valuing residential property. Creditor asserts that while Debtors' opinion of the value of their residence may be admissible pursuant to Fed. R. Evid. 701, "such testimony is entitled to negligible weight."

The Creditor states that in February 2014, the engaged the services of a licenced appraiser to conduct a summary appraisal or an accurate and adequately supported opinion of value of the subject property. The Creditor claims that this appraiser conducted a visual inspection of the exterior of the subject property and performed a sales comparison approach. The appraiser's opinion of market value of the subject property was $205,000.00 as of February 25, 2014 (the court notes, however, that this was not the petition filing date of Debtors' case).

Creditor attaches a copy of the exterior appraisal as Exhibit "A" in support of its opposition and as an attachment to the declaration of Appraiser Scott Derksen. FN. 1.

FN.1. The Creditor filed the Declaration of Scott Derksen in Support of Creditor's Opposition to Motion to Value Collateral and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a).

The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

The Declaration of Scott Derksen states that Mr. Derksen conducted an exterior-only inspection residential appraisal of the property located at

5025 Camille Court, Sacramento, California. After conducting this inspection, and performing a sales comparison to other comparable properties in the area, Mr. Derksen arrived at a market valuation of the subject property of $205,000.00 as of the date of the appraisal. The court also notes that Mr. Derksen's declaration states that it is under penalty of perjury and that the statements **are "true and correct to the best of my knowledge, information, and belief.**" FN. 2.

FN. 2. This could be read two ways. The first is that "whatever I have said is true, to the extent that I have any knowledge about what I am talking about." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Creditor's counsel is advised that his firm should update its declaration forms to be in unqualified compliance with § 1746 as the next time this court, or other judges sitting in this

District may well find the declaration to be insufficient and deny the motion without prejudice and without a hearing.

The attached Appraisal is stated to be an Exterior-Only Inspection Residential Appraisal Report, with Date of Signature and Report of February 27, 2014, and an effective date of appraisal of February 25, 2014. Lot 461 Larchmont Chardonnay Unit No. 6, also known as 5025 Camille Court, Sacramento, which the appraiser notes is located in the Larchmont are of Sacramento County. The neighborhood is noted as containing mostly singly family homes that are "average quality" and similar in design. Exhibit A, Dckt. No. 24.

The report includes a description of the neighborhood, possible adverse conditions on the marketability of the property, and that the appraiser conducted a "drive-by" inspection of the properties, which is not considered a "technical inspection." The Appraiser rated the home condition and quality of the property as average, and noted that the property contained additional features like a fireplace, fencing, and a porch. No adverse conditions were noted.

The report also includes plat, flood, and location maps, as well as photographs of the property and of comparable units in the area. The appraisal includes an analysis of three other comparable properties in the area, with prices that bracket the appraiser's valuation of the subject property ranging from $202,100 to $206,100. It appears that the only adjustments to the comparable properties are made on the basis of the gross living area available in each residence. The Appraiser concludes that the value of the property is $205,000.00.

While Creditor's appraisal is comprehensive and contains a high degree of detail as to the exterior appearance of the property, the Creditor's valuation is based solely on a visual examination of the exterior of the subject property, and therefore is not the most accurate valuation of the property possible. Presumably the Debtor's valuation of the property takes into account the actual conditions of the exterior, interior, and additional features of the property.

The court finds that the fair market value of the property is $150,000.00. The senior in priority first deed of trust secures a claim with a balance of approximately $167,585.00. Creditor's second deed of trust secures a claim with a balance of approximately $36,396.82. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Charles and Tammy Raetz, "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 Sierra Central Credit Union secured by a second priority deed of trust recorded against the real property commonly known as 5025 Camille Court, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $150,000.00 and is encumbered by senior liens securing claims in the amount of $203,954.82, which exceed the value of the Property which is subject to Creditor's lien.

67. 14-23271-E-13 HLG-5 ROBERT/CINDY LANDINGHAM Kristy A. Hernandez

MOTION TO VALUE COLLATERAL OF CACH, LLC 6-12-14 [64]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Cach, LLC, "Creditor," is granted.

The Motion to Value filed by Robert and Cindy Landingham, "Debtors" to value the secured claim of "Creditor" is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 8242 Streng Ave., Citrus Heights, California, "Property." Debtors seek to value the Property at a fair market value of $280,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $301,407.92. Creditor's judicial lien on the property secures a claim with a balance of approximately $2,312.10. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Robert and Cindy Landingham, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Cach, LLC secured by a judicial lien recorded against the real property commonly known as 8242 Streng Ave., Citrus Heights, 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 $280,000.00 and is encumbered by senior liens securing claims in the amount of $367,653.92, which exceed the value of the Property which is subject to Creditor's lien.

68. 14-23271-E-13 HLG-6 ROBERT/CINDY LANDINGHAM Kristy A. Hernandez

MOTION TO VALUE COLLATERAL OF DISCOVER BANK 6-12-14 [54]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Discover Bank, "Creditor," is granted.

The Motion to Value filed by Robert and Cindy Landingham, "Debtors" to value the secured claim of "Creditor" is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 8242 Streng Ave., Citrus Heights, California, "Property." Debtors seek to value the Property at a fair market value of $280,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $301,407.92. Creditor's judicial lien on the property secures a claim with a balance of approximately $7,377.53. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Robert and Cindy Landingham, "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 Discover Bank secured by a judicial lien recorded against the real property commonly known as 8242 Streng Ave., Citrus Heights, 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 $280,000.00 and is encumbered by senior liens securing claims in the amount of $367,653.92, which exceed the value of the Property which is subject to Creditor's lien.

69. 14-23271-E-13 ROBERT/CINDY LANDINGHAM — MOTION TO VALUE COLLATERAL OF SECURITY CREDIT SERVICES, LLC
HLG-7 Kristy A. Hernandez — 6-12-14 [59]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Security Credit Services, LLC, "Creditor," is granted.

The Motion to Value filed by Robert and Cindy Landingham, "Debtors" to value the secured claim of "Creditor" is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 8242 Streng Ave., Citrus Heights, California, "Property." Debtors seek to value the Property at a fair market value of $280,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $301,407.92. Creditor's judicial lien on the property secures a claim with a balance of approximately $12,865.48. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Robert and Cindy Landingham, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Security Credit Services, LLC secured by a judicial lien recorded against the real property commonly known as 8242 Streng Ave., Citrus Heights, 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 $280,000.00 and is encumbered by senior liens securing claims in the amount of $367,653.92, which exceed the value of the Property which is subject to Creditor's lien.

70. 09-48372-E-13 TANYA/BENJAMIN MONARQUE **MOTION TO APPROVE LOAN MODIFICATION**
PGM-5 Peter G. Macaluso **6-16-14 [85]**

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 - Hearing Required.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Tanya and Benjamin Monarque ("Debtors") seeks court approval for Debtors to incur post-petition credit with some lender identified simply as "Chase" ("Creditor"). The Creditor, whose claim the plan provides for in Class 4, has supposedly agreed to a loan modification which will reduce Debtor's mortgage payment to $1,023.71 a month. The modification will provide for a fixed interest rate for the life of the mortgage, unless the initial modified interest rate is below current market interest rates.

The Motion is supported by the Declaration of Tanya and Benjamin Monarque. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms. Dckt. No. 87.

Opposition by the Trustee

The Trustee does not oppose Debtor's Motion to Approve Loan Modification, but requests a clarification: Debtor's Motion indicates Debtor is in month 58 of his Chapter 13 Plan, when in fact Debtor is in month 55 of his Plan. Dckt. No. 96.

Response by Debtors

Debtors respond to the Trustee's objection that Debtors are paying 100% to their creditors. The Debtors are proposing a 55 month plan, as will be corrected in the order confirming the proposed plan. Debtors state that they are seeking to end the plan and this agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, and/or any Discharge that the debtors may receive in this case.

UNIDENTIFIABLE CREDITOR

The Motion makes only one reference to the Lender, which holds the deed of trust against the property secured by the Note the Debtors wish to modify. The Debtors name a "Chase" as the entity that offered the Debtors the subject trial loan modification, to which Debtors will make three (3) payments in the amount of $1,023.71 beginning June 1, 2014, with the last payment under trial loan modification to be made by August 1, 2014. Dckt. No. 85.

A Motion to Approve a Loan Modification that does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Debtors fail to identify with specificity the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party. A motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a).

Although the Trial Loan Modification filed on the docket as Exhibit "A" in support of the Motion, Dckt. No. 88, lists the Lender as JPMorgan Chase Bank, N.A. (Dckt. No. 88 at 6), the Debtors use the generic term of "Chase" to describe the lender and party to the subject trial modification agreement. This term fails to describe the subject lender with the necessary specificity; the term "Chase" can be used to refer to a number of associated institutions.

A search of the Federal Deposit Insurance Corporation Institution Directory shows five different entities using the search term "Chase": JPMorgan Chase Bank, National Association, Chase Bank USA, National Association, Fox Chase Bank, the Chasewood Bank, JPMorgan Chase Bank, Dearborn--all FDIC-insured entities. FDIC Institution Search Using the Term "Chase" (July 19, 2014, 11:08 AM), http://www2.fdic.gov/IDASP/main.asp. A search using the business search tool offered by the California Secretary of State Website produces a whopping 747 entity records using the field

description of "Chase." . Business Entity Search Using the Term "Chase" (July 19, 2014, 11:10 AM), http://kepler.sos.ca.gov/.

The court cannot determine which entity is party to the subject loan modification. 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. As this court stated previously, the fundamental requirement for any federal court to exercise federal court judicial power is that there must be a case or controversy between the parties for whom relief is sought. U.S. Constitution Article III, Sec. 2. Here, there is nothing to indicate that there are two real parties in interest whose rights are being impacted.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract. It is not too much, and is Constitutionally mandated, that the true parties appear in federal court to have their rights and interests determined, and the relief they seek issued.

DEFECTIVE SERVICE

The Proof of Service reflects that the Motion and accompanying filed documents were served on various Chase entities, including including Chase Home Finance, LLC, "CHASE MTG," Chase Home Finance, Chase Home Finance LLC, and JPMorgan Chase Bank, N.A. Of note, the creditor identified in the filed Trial Loan Modification Document as the lender and party to the subject modification agreement, that is, JPMorgan Chase Bank, N.A., was served at the Chase Records Center, 700 Kansas LN, MC: LA4-555, Monroe, Lousiana.

The address for JPMorgan Chase Bank, N.A. on the Federal Deposit Insurance Corporation Institution Directory, however, reveals the address of this entity to be 1111 Polaris Parkway, Columbus, Ohio. Furthermore, the addresses and entities listed on the Certificate of Service seem to indicate that service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The Proof of Service does not indicate that service was made to the corporations on the attached creditor matrix to a specific representative or agent for service, or that it was at least addressed to the entity, "Attn: Officer/Agent for Service of Process," or that the pleadings and supporting documentation were sent be certified mail to the listed corporate entities. The actual creditor in interest in this Motion may not have been properly

served and given an opportunity to object or respond to the Motion to Approve the Loan Modification.

Based on the foregoing service defects of Debtors' Motion, and Debtors' failure to identify the creditor to the subject loan modification with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, this Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Tanya and Benjamin Monarque 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.

71. 09-48372-E-13 TANYA/BENJAMIN MONARQUE — MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso — 6-16-14 [79]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan for three reasons.

First, it appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $685.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $80,847.25 have become due. The Debtor has paid a total of $80,162.25 to the Trustee, with the last payment posted on June 3, 2014 in the amount of $800.92.

Second, the Trustee is uncertain of the plan term proposed. section 1.01 provides for payments of $80,162.25 through May 2014 (month 53 where Debtor's petition was filed on December 9, 2009), then $685.00 for 2 months starting on June 2014, for a total plan term of 55 months. Section 1.03 proposes a 60 month plan. Debtors are under median income pursuant to Form B22C (Dckt. No. 26). The plan term under the confirmed plan is 60 months. Debtors' Motion, Dckt. No. 79, states that the final two payments will pay the additional attorney's fees in the amount of $1,230.00. Debtor's attorney has filed a Motion for Additional Fees, which is scheduled to be heard concurrently with this matter.

Third, Debtor's modified plan proposes to reclassify JPMorgan Chase regarding Debtors' ongoing mortgage and pre and post-petition arrears from a Class 1 secured creditor to a Class 4 secured claim paid directly by Debtor based on a trial loan modification. Debtors field a Motion for Order Approving Trial Loan Modification, which is scheduled to be heard on this same hearing date. Debtor's modified plan provides no provision should the modified plan be granted, and then Debtors are unsuccessful in obtaining a permanent loan modification. To date, $432.34 remains to be paid in pre-petition arrears and $1,576.41 in post petition arrears.

RESPONSE BY DEBTOR

Debtors respond by stating that they intend to be current, on or before the date of this hearing. Debtors have just two payments left to complete the Plan at 100%. Debtors intended to propose a fifty-five (55) month plan, which they request be corrected in the order confirming the modified plan. The Debtors are under the median income, have satisfied the terms of the plan and liquidation requirements.

Debtors also assert that a Motion to Approve the Loan Modification has been filed and will be heard by this court, and that Debtors have not received any opposition thus far.

A review of the case docket, however, does not show that Debtors have provided receipts or proof of payment showing that they are current in their plan payments. Additionally, the court is denying Debtors' Motion to Approve the Trial Loan Modification, PGM-5, on this hearing date. Debtors have presented no provision for the contingency that the court denies Debtors' Motion, and Debtors cannot obtain a permanent loan modification on the Class 1 claim allegedly held by JPMorgan Chase Bank, N.A.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

72. 09-48372-E-13 TANYA/BENJAMIN MONARQUE
PGM-6 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
6-16-14 [90]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Peter Macaluso, the Attorney("Applicant") for Tanya Monarque and Benjamin Monarque, the Chapter 13 Debtors ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period June 17, 2013 through June 16, 2014.

Counsel is requesting fees for 8.10 hours of work which he argues was unanticipated and substantial post-confirmation work that he had to perform on the Debtors' case. This work included two Motions to Modify the Debtors' Chapter 13 Plan, and a Motion to Approve a Trial Loan Modification. The Applicant provides a task billing analysis and supporting evidence for the services provided, which are described and separated by the category of the Motion tasks performed.

Motion to Modify

When the Debtors received a Motion to Dismiss their case by the Trustee, Counsel reviewed the Motion to Dismiss, and prepared and sent

communications to his clients regarding the Motion. Counsel reviewed the case in preparation for a meeting with his clients, and met with with his clients to discuss the Motion to Dismiss and formulate a new plan. These efforts culminated in the preparation and filing of a Motion to Modify, PGM-3, on July 8, 2013.

Counsel then reviewed the rulings for the Motion to Confirm, and contacted his clients about the outcome of the hearing. He then prepared and sent an order to modify the plan to the Chapter 13 Trustee for signature. These tasks took 4.25 hours, and Counsel argues that these services constituted substantial and unanticipated work in this case. These services were rendered in the time period of June 16, 2013 to August 19, 2013.

Motion to Approve Trial Loan Modification

Counsel also describes the services performed to request court approval for a trial loan modification that Debtors were offered. For this matter, Counsel first communicated and met with his clients to file a Motion to Modify their Chapter 13 plan, PGM-4, and then prepared and filed a Motion to Approve the Trial Loan Modification agreement that Debtors executed with their lender. These tasks represented 3.85 hours in work.

These services were rendered in the time period of June 16, 2013 to August 19, 2013. These services were performed in the period of May 22, 2014 to June 16, 2014.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including filing two successful Motions to Modify the Debtors' Chapter 13 Plan after the Trustee filed a Motion to Dismiss the Case for Failure to Make Plan Payments, Dckt. Nos. 57 and 70, and filing a Motion to Approve a Loan Modification after the Debtors received a offer to complete trial loan modification in order to qualify for a permanent loan modification. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable, and that the post-confirmation work performed by Counsel represents unanticipated and substantial work on behalf of the estate.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Although Applicant states that he performed 8.10 hours of unanticipated, necessary, and substantial work, it appears from Applicant's billing statement that he has reduced his request for fees charged for only 6.15 hours of work. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso	6.15	$200.00	$1,230.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,230.00

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

Fees $1,230.00
Costs and Expenses $ 0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtors Tanya Monarque and Benjamin Monarque having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso , Professional Employed by the Chapter 13 Debtors

Fees	$1,230.00
Costs and Expenses	$ 0.00

IT IS FURTHER ORDERED that the Chapter 13 Debtors are authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 Case.

73. 14-23972-E-13 NBC-1 — THOMAS BURGESS AND PATRICIA VIRDEN — Eamonn Foster — MOTION TO VALUE COLLATERAL OF E TRADE BANK — 5-21-14 [16]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on May 21, 2014. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of E*TRADE Bank, "Creditor," is denied without prejudice.

Debtors seek to value the secured claim of E*Trade Bank, which holds the second deed of trust recorded against Debtor's real property. Debtors' Motion to Value states they are the owners of the subject real property commonly known as 11770 Craig Avenue, Red Bluff, California, "Property." Debtor seeks to value the Property at a fair market value of $100,000.00 as of the petition filing date. Debtors do not provide, however, a declaration stating their opinion of the property's value.

Although Debtors' opinion of value is typically evidence of the asset's value because Debtors are the owners of the property (*see* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004)), the Debtors have not provided competent and authenticated evidence of the property's value. Debtors attach to their Request for Judicial Notice Debtors' Schedule A and a printout from Zillow.com in support of the present Motion. As this court has stated on multiple occasions, however, an estimate from Zillow.com is not admissible evidence and cannot be relied upon by the court as the sole evidence of a property's value. Fed. R. Evid. 801, 802. There is no exception to the hearsay rule under which a Zillow report can come into evidence; the person who generated the values for a Zillow report is not available to be cross-examined as to either the underlying facts in the document, and the source for such facts. Thus, a Zillow estimate is merely hearsay and cannot be accepted by the court as a proper valuation of the property.

The Debtors not having provided sworn testimony or authenticated evidence as to the subject property's value, the Debtors have not established a *prima facie* case for valuation and bifurcation of the claim of E*Trade, allegedly a the holder of the second deed of trust in Debtors' real property, made pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas Burgess and Patricia Virden, "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 is denied.

74. 14-23972-E-13 DPC-1 | **THOMAS BURGESS AND PATRICIA VIRDEN** | **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Eamonn Foster | **6-19-14 [26]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 19, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtors' plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors appear to be over the median income and propose plan payments of $845.00 for 60 months, with an 8% dividend to the unsecured claim holders.

   a. Income: Thomas Burgess's gross income listed on Schedule I reflects $3,160.67; however, his pay advices provided to the

Trustee reflect a gross of $4,831.89 per month. Exhibit "A."

b. Retirement Loan: Schedule I lists a payroll deduction on Line #5d in the amount of $333.25. Debtor admitted at the First Meeting of Creditors held on June 12, 2014, that the retirement loan will be paid in full in a year and a half. The loan will mature within the life of the plan and the Debtors have not proposed to increase their plan payments once the loan is paid.

c. Not all Income Reported: Debtors received a tax refund of $3,202.00 for 2013 and a federal refund of $1,480.00 in 2012. The Trustee did not receive a copy of the Debtors' 2012 state return. No future tax refund income is projected on Schedule I. Debtors received $2,049.00 in federal tax refund based on their total tax payments of $5,025.00, where only $2,976.00 of tax was due.

Debtors also received a state refund from their 2013 return in the amount of $1,153.00. Of the $2,049.00 refund, $1,399 was from education credits, and $200 was from the Child Tax Credit, since Debtors' depends are reported on Schedule I as ages 8, 13, and 19. It appears that since Debtors are retaining their real property, their tax deductions in the future are likely to remain the same or similar. If Debtors included this income in their monthly income calculation, dividing their monthly income throughout the year, they would have at least $266.83 per month in additional income. Continued tax refunds appear likely, and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

d. Retain Property: The Plan proposes to retain a 2013 Mahindra 3016 tractor purchased in June 2013. According to Schedule D, the Debtors owe $27,536.00 to Mahindra. Section 2.11 lists the monthly obligation in the amount of $372.25 per month. Schedule I, Line 8a lists Debtors' net income from their walnut orchard in the amount of $84.00 per month. Retaining the tractor appears to be to the detriment of creditors. The Debtors acquired the orchard when they purchased their residence.

Question No. 18 of the Statement of Financial Affairs states that the business started in 2002. It is not clear what the value of the walnut crop is, and the trustee believes that the Debtors may expect significant proceeds from their crop where they seek to retain a tractor at $372.25 per month. Debtor may have had these trees since 2002 based on the sale date of their property, and where Debtor admitted that when they bought the property it had the trees at that time.

e. Debtor's Occupation: Debtor admitted at the First Meeting of Creditors on June 12, 2014, that Patricia Virden has

changed positions within Sierra Pacific Industries, and that her income has changed. No updated paystubs or amended Schedule I has been provided to the Trustee or filed with the court, so it appears that Debtor's current income is not properly stated and they may not be able to make the payments called for under the plan under 11 U.S.C. § 1325(a)(4).

2. Debtors' Plan also relies on the Motion to Value the Secured Claim of E*Trade Bank, which is set for hearing on this same day. That Motion is denied by this court without prejudice. Therefore, Debtors' Plan does not currently have sufficient monies to pay the claim in full and confirmation will be denied on this basis.

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.

75. 14-24574-E-13 DJC-1 JULIE VILLESCAS AND DEBORAH HOWE VILLESCAS Diana J. Cavanaugh

MOTION TO CONFIRM PLAN 6-10-14 [16]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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 June 10, 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.

76. 14-25474-E-13 LEE SCIOCCHETTI — **MOTION TO VALUE COLLATERAL OF REDWOOD CREDIT UNION**
LBG-1 Lucas B. Garcia — **6-20-14 [14]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, the Chapter 13 Trustee, and Office of the United States Trustee on June 20, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Redwood Credit Union, "Creditor" is granted.

The Motion filed by Lee Alan Sciocchetti, "Debtor", to value the secured claim of Redwood Credit Union, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Lance Cabover Camper,

"Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $5,370.00 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 November, 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,938.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Debtor argues that the respondent creditor's secured claim should be determined to be in the amount of $5,370.00. *See* 11 U.S.C. § 506(a).

Creditor's Opposition

The Redwood Credit Union, the respondent creditor in this case, asserts that the replacement value of the asset is $16,700.00. The Credit Union bases this value on the average retail value for the vehicle, as purportedly listed in the June 3, 2014 NADA Guides Official Car Guide. Creditor has provided the court with the NADA valuation, a competing market guide or report.

The Creditor attempts to attach a copy of a NADAguides.com printout showing an estimate for a "2008 Lance Lance 845," with a "suggested list price" of $23,165 with the Declaration of Andrew White in Support of Redwood Credit Union's Opposition to Motion to Value Collateral. The "low retail" price for the vehicle is listed as $13,860. FN.1.

FN.1. The Creditor filed the Declaration of Andrew White in Support of Redwood Credit Union's Opposition to Motion to Value Collateral and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a).

The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

The NADA lists the "average retail" value as $16,700, which Creditor asserts is the correct retail merchant value for this Vehicle. The "average retail value" is defined on the same NADA Guide printout as follows:

> Any average retail vehicle should be clean and without glaring defects. Tires and glass should be in good condition. The paint should [illegible] and have a good finish. The interior should have wear in relation to the age of the vel[illegible]. Carpet

and seat upholstery should be clean, and all power options should work. The mileage should be within the acceptable range for the model year.

An average Retail vehicle on a dealer lot may include a limited warranty or guarantee, and possibly a current safety and/or emission inspection (where applicable).

The Creditor provides no basis, however, for why it believes that the court and parties in this matter should adopt the "average retail value" listed on the NADA Guide report as the correct valuation for this Vehicle. Creditor offers no evidence that the subject vehicle should be evaluated in the condition specified in NADA's criteria for an average retail vehicle. Creditor offers no testimony or testimony that the subject 2008 Lance Cabover Camper is" clean and without glaring defects," or that the tires and glass of the car are in good condition.

The Declaration of Andrew White, a Recovery Officer at the RedWood Creditor Union and one of the custodian of books, records and files of the Credit Union, contains no information about the actual condition and mileage of the subject vehicle. Mr. White provides no basis for adopting the average retail value of the vehicle as listed by the attached NADA guides. There are no adjustments made for necessary repairs or other issues that may currently exist with the Vehicle.

Mr. White simply states that the opposing Creditor bases its opinion of the value of the Vehicle on a NADA Guide report filed in support of the Opposition, ¶ 5, Dckt. No. 23, without explaining who in the Creditor company inputted the values and entered the information necessary to generate the values listed on the NADA Guide Report. The Declaration gives no details as to the condition of the paint of the car, the vehicle's finish, the cleanliness of the carpet and seat upholstery, and the power and steering features of the car.

Rather, the respondent Creditor adopts the average retail value listed on the Guide, the middle figure of the merchant retail values listed on the printout of the NADA Guide. There are no reductions in price made for maintenance, cleaning, and preparation of a vehicle for retail merchant sale, which may include: oil change, filters, engine cleaning, transmission fluid and filter replacements, interior detailing and cleaning, used condition of tires, exterior detailing, scratch covering, and a tank of gas.

RESPONSE BY DEBTORS

Debtor responds to the opposition of Redwood Credit Union by stating that they believe that the $16,700.00 value cited by Creditor as the value of the Vehicle represents a value for "excellent or new condition 2008 Lance." Dckt. No. 29.

Debtor states that the Vehicle, in fact, has the following issues previously undisclosed in their original motion:

a. Gash in the front that is patched with duct tape

b. Mice have chewed through the wiring

c. There are no outside lights

d. Limited lights inside

e. Heater is non functional

Based on the issues above, the Debtor maintains that the Vehicle is in poor, or at most fair, condition and continue to assert that the more accurate value of the Vehicle is $5,370.00.

Creditor has withheld from the court that the "average retail" definition used by the NADA is applicable to only cars that are in clean condition, "without glaring defects". Though Creditor may assume that the court is familiar with such definitions, it is not appropriate for parties to task the court to do independent research and presentation of evidence.

The Debtor has provided testimony that the wiring in the car has been chewed, that there is a "gash" in the front of the vehicle that is patched with duct time, "there are no outside lights," limited interior lighter, and non-functioning heater (which is of no great surprise for a car which has actually been used by a consumer). Though recognizing that Debtor did not provide this information until after the Opposition was filed, Creditor made no attempt to provide the court with the value of a repossessed four model year old car, but to the clean retail car sitting on the dealer lot.

The court finds that the 2008 Lance Cabover Camper which secures the claim of Redwood Credit Union to have a value of $5,370.00. The lien on the Vehicle's title secures a purchase money loan incurred in November, 2007, more than 910 days prior to the filing of the petition, with a balance of approximately $16,938.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $5,370.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The balance of the claim shall be paid as a general unsecured claim as provided in a confirmed bankruptcy 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.
>
> The Motion for Valuation of Collateral filed by Lee Alan Sciocchetti, "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 Redwood Credit Union, "Creditor," secured by an asset described as 2008 Lance Cabover Camper, "Vehicle," is determined to be a secured claim in the

amount of $5,370.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,370.00 and is encumbered by liens securing claims which exceed the value of the asset.

77. 13-35878-E-13 MICHAEL JOHN/TARA HOOPER MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 5-22-14 [49]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, all creditors, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 61 days' notice was provided. 42 days' notice is required.

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

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

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 plan on the basis that it is not the Debtors' best effort under 11

U.S.C. § 1325(b). The Trustee asserts that Debtors' First Amended Plan filed on May 22, 2014, and Amended Schedules I and J filed on May 22, 2014, Dckt. Nos. 53 and 55, do not resolve the Trustee's prior Objection to Confirmation, NLE-1, sustained by the court on April 8, 2014. Civil Minutes, Dckt. No. 40.

Projected Income

The Trustee asserts that Amended Schedule I raises questions concerning the accuracy of the statements made therein. **Schedules I and J have once again been amended, Dckt. No. 55. Schedule I lists Mr. Hooper's income as SDI in the amount of $569.00 per week, which appears to be a temporary reduction in his income as the Declaration filed by Debtors, Dckt.** No. 51, states that non-essential bills from the budget have been cut until Michael returns to work in August 2014.

Second Amended Schedules I and J, Filed May 22, 2014

On May 22, 2014 the Debtors filed Second Amended Schedules I and J. Dckt. 55. For Second Amended Schedule I, the Debtors state that their income is "Other Government Assistance" in the amounts of $2,398.00 (Debtor) and $800.00 (Co-Debtor). The payments are for State Disability Insurance and Food Stamps.

Second Amended Schedule J lists monthly expenses of $3,048.40.

First Amended Schedules I and J, Filed January 29, 2014

On January 29, 2014, the Debtors filed First Amended Schedule I listing their gross income to be $4,889.19. This was all generated from wages. The "employer" is listed to be "Disability State of Ca."

On First Amended Schedule J the Debtors list $3,804.19 in monthly expenses.

Original Schedules I and J.

On Original Schedule I the Debtors list their gross income to be $4,889.19. Dckt. 1 at 28. The employer is identified as Terminex. All income is from wages.

Original Schedule J lists $3,654.19 in expenses. *Id.* at 32-33.

Review of Current Finances

The Declaration filed in support of confirmation (Dckt. 51) provides no explanation for this income change. Debtors do not provide an explanation of the changes in expenses, but they appear to be a reduction in food by $200.00 back to their original expense level, a reduction in clothing and laundry from $100.00 to $40.00, a reduction in unspecified personal care from $100.00 to $40.00, and reduction in Transportation from

$400.00 to $225.00. Schedule I does not indicate on Line 13 that any increase in income is expected within a year.

Trustee is not certain as to why Debtors have not projected the income to be received as of August 2014. The Trustee believes that the reduction is temporary. The original Schedule I had reflected more than twice the gross income in the current Schedule. The amount the Debtor spends on their expenses is not clear where the Food expense is now back to the original level.

Tax Refund Projected at $333.33 per month.

Page 3, lines 1 through 9 of the Debtors' Declaration state the following:

> We are aware that our average tax refund has been approximately $4,000 per year. Historically we do our weekly preventative maintenance on the 2001 Dodge and home repairs that have been deferred, which this year included our air conditioner that needed repair. We believe that this refund stream will not continue for the next calendar years, as our income will be reduced. We do not anticipate receiving further substantial refunds in the future, but are willing to submit our tax returns for review by the Trustee as to whether there are excess funds to be paid to creditors.

The Debtors' declaration does not match the information previously listed in their amended Schedule I filed on January 29, 2014, Dckt. No. 27, where it's listed that their tax refund in the amount of $1,800 is going forward. It is not clear to the Trustee if the Debtors will continue to average $4,200 per year in refunds, or if they will only possibly receive $1,800.00.

Debtors' proposed plan payment is $150.00 per month, so a substantial tax refund shows that the Debtors may be able to increase their plan payment significantly, based on Debtors' $4,000 tax refund projected, the Debtors are receiving the equivalent of $333.33 per month in tax refunds, more than twice the plan payment. No documentary evidence, such as bills and receipts, have been provided to the Trustee or filed with the court.

DEBTORS' RESPONSE

The Debtors have responded, with both their attorney's arguments and a supporting declaration. They state that since the filing of this case, the Debtors have done their best in order to meet the terms of the plan even though they have met "significant uncontrollable medical damages which have caused the debtors to amend the plan and now learning the what income that is present S.D.I. ($2,398) & Foodstamps ($800)."

Mrs. Hooper testifies in her declaration that her husband has torn his disc in his knee, and because this did not occur at work, there is no

worker's compensation available to Debtors, only State Disability Insurance ("S.D.I."). ¶ 1, Declaration of Tara Hooper, Dckt. No. 65.

Debtors' response states that Mr. Hooper is waiting for knee surgery, and two additional carpal tunnel surgery on both hands, which could preclude employment for at least the next two years.

In her Declaration, Ms. Hooper further states that the Debtors are aware that their average tax refund has been approximately $4,000.00 per year, and that Debtors typically perform yearly preventative maintenance on the 2001 Dodge and home repairs that have been deferred. This year, the Debtors repaired an air conditioning unit with the funds. However, Ms. Hooper states that this "refund stream will not continue for the next calendar years," as Debtors' income will be reduced and is now projected to be S.D.I. and Foodstamps for the next two years as Mr. Hooper goes through several surgeries for his knees and carpel tunnel. Dckt. No. 65.

Debtors assert that they understand their duty to notify the Trustee and Counsel when, and if they return to employment, and/or their income changes by more than 10%. Debtors acknowledge that they should submit tax returns yearly in order to verify both the ability to, maintain, and/or increase plan payments during the term of this case.

DISCUSSION

While some bankruptcy cases go smoothly, not all follow a linear, smooth path. Real life intervenes. The Debtors and the their three children are addressing such real life issues.

The Trustee raises real concerns relating to the information provided with the Motion to Confirm and the multiple amended Schedules I and J. In their Reply and Reply Declaration, the Debtors address these issues.

The explanation concerning the income tax refund is somewhat "messy," but adequate under the circumstances. The Debtors' income appears to be impaired due to the medical issues for the near future, and any significant tax refund may be limited.

Confirmation of the Plan does not limit the Trustee's ability to monitor the Debtors' finances or require the Debtors to provide copies of tax returns and current financial information. Specific requirements can be included in the order confirming the First Amended Chapter 13 Plan.

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

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

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

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

IT IS ORDERED that the Motion is granted and Debtors' First Amended Chapter 13 Plan filed on May 22, 2014 is confirmed. 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.

78. 14-24678-E-13 DPC-1 LYDIA MANLANGIT Pro Se OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-18-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 18, 2014. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan for two reasons. First, Debtor failed to appear and be examined at the First Meeting of Creditors held on June 12, 2014. Debtor is required to attend the meeting under 11 U.S.C. § 343, and Debtor has not presented any evidence as to why she failed to appear. The Debtor should be aware that she is required to attend, since this is the 4th case filed by the Debtor since August 25, 2009.

Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6), since,

a. Schedule J lists her net income as -$160.00.

b. Schedule J does not list an expense for the monthly filing fee of $70.00. Dckt. No. 7, Order Approving Payment of Filing Fee in Installments.

c. Wells Fargo filed a claim on May 12, 2014. The creditor is not listed in Debtor's plan or schedules. It appears that the Debtor purchased a 2010 Honda Civic on or around February 10, 2014.

d. The plan does not pay unsecured claim holders what they would receive in the even of a Chapter 7, 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals $6,450.00 and the Debtor is proposing a 5% dividend to unsecured claim holders, totaling $63.52. Debtor is married and her spouse is not included in the bankruptcy. She has not filed a spousal waiver for the use of California State Exemptions under the California Code of Civil Procedure Section 703.140; on this basis, her exemptions should be disallowed.

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.

79. 14-22679-E-7 DENNIS FLORES OBJECTION TO DEBTOR'S CLAIM OF

DPC-2 **Mark Lapham** **EXEMPTIONS**
6-5-14 [65]

CASE CONVERTED TO CH. 7 ON 7/1/14

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Debtor's Claim of Exemptions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

80. **13-28480-E-13** **CHARLES/TAMYRA HEARD** **MOTION TO MODIFY PLAN**
PGM-5 **Peter G. Macaluso** **6-6-14 [93]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014 By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the modified plan for three reasons.

First, it appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent $1,685.00 under the terms of the proposed modified plan. According to the plan, payments of $12,615.00 have become due. The Debtors have paid a total of $10,930.00 to the Trustee with the last payment totaling $1,465.00 posting on March 31, 2014.

Second, Debtors' modified plan no longer includes an increase in the plan payment in the 37th month. In the order confirming Debtors' original plan, Debtors' plan payment increased in the 37th month (July 2015) by $40.00 due to Debtors have completed payments on a 2005 Harley Davidson purchased by the Debtor in his mother's name and payments made through her. Debtors include the Harley Davidson on Schedule B, Dckt. No. 20, and continues to budget the $400.00 monthly payments on their most recent Schedule J, Dckt. No. 85.

The Trustee questioned this debt at the August 15, 2013 Meeting of Creditors, where Debtors agreed to step up future plan payments. The Trustee believes the proposed plan payment is not the Debtors' best efforts.

Third, Debtors' Declaration, Dckt. No. 95, indicate that Debtors' 401K loans are now paid in full, allowing them to increase their plan payments by $200.00. Debtors' modified plan proposes an increased payment of $1,685.00. Debtors' current plan payments are $1,465.00.

However, Debtors have filed three different Schedule I's so far, none of which support a 401K pay off. Schedule I filed on July 9, 2013, indicates a monthly 401K Loan payment for Tamyra Heard of $225.00, and states the loan will be paid off on December 2013, when Debtors will increase their plan payment. Schedule I filed on January 7, 2013, Dckt. No. 65, includes a monthly 401K Loan payment for Tamyra Heard of $487.60, an increase of $262.50. Dbetor's most recent Schedule I, filed on May 1, 2014 as Exhibit B, Dckt. No. 85, to Debtors' Motion for an Order Approving the Loan Modification, includes a monthly 401K loan payment for Tamyra Heard of $414.62, and a 401K Loan payment of $104.43 for Charles Heard.

Trustee states that it would appear that Debtors have not paid off their 401K loans as stated in their declaration, but rather, have continued to borrow against them. Trustee is unable to locate within the court docket any kind of motion or order permitting Debtors to incur additional debt.

REPLY OF DEBTORS TO TRUSTEE'S OBJECTION

Debtors respond by stating that they intend to be current, on or before the date of this hearing. Additionally, Debtors state that they had more than one 401K loan when they filed. Only one was to be paid off during the life of the plan and pursuant to a previous order of the Court, the Debtor was to increase plan payments by $200.00. The current plan increases the payments by $200 to account for the payoff. The other loans remain as stated in the Debtors' most recently filed Schedule J.

A review of the docket shows that neither the Trustee nor Debtors have filed statements or proof of payment indicating that Debtors are now current on their plan payments. As such, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

81. 12-32781-E-13 SDB-3 TIBERIO/LUCIA JORGE W. Scott de Bie MOTION TO MODIFY PLAN 5-30-14 [51]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2014. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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 May 30, 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.

82. 14-25181-E-13 DPC-1 — MICHAEL/CLAIRE STANLEY — Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 6-25-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on June 25, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection and deny confirmation of the Chapter 13 Plan.

The Chapter 13 Trustee opposes confirmation of the Plan for two primary reasons.

First, it appears that Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to value the secured claim of Golden One Credit Union, which is set for hearing on July 22, 2014, the same day as this motion. The court is granting this Motion to Value, PGM-1, on this hearing date, thus resolving this part of the Trustee's Objection.

Second, it does not appear that the plan provides all of the Debtors' projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). On Schedule I, Debtors report income of $400 per month from tax refund which calculates to approximately $4,800 per year in refunds. On Statement of Financial Affairs No. 2, Debtors report tax refunds that total $10,591 in 2013 ($882.50 per month), $4,952 in 2012 ($412.67 per month); and $6,643 in 2011 ($553.59 per month).

Debtors have a history of receiving large tax refunds, leading the Trustee to believe that they are over withholding tax from their income. Debtors on their Schedule I project a $6,000 refund and allocate only $4,800. Form 22C shows that the Debtors are above median income. $1,432.62 is estimated for taxes, which appears almost identical to Schedule I.

Form 22C also claims $200.00 a month for educational expenses, without providing documentation of the expenses and an explanation. Form 22C, Page 12, claims $163.31 for health care, where Schedule J shows $30, and $110 for telecommunication services (where basic telephone and cell service is not to be included and on Schedule J, page 35, Debtors do not itemize the claimed expense). The projected disposable income from the means test should be positive. Trustee requests that the Debtors consent to amending the plan to be required to turn over any future refunds during the life of the plan exceeding $4,800.

RESPONSE BY DEBTORS

Debtors' counsel has filed a Reply to the Trustee's Objection to Confirmation, but no declaration or other evidence in support thereof.

Debtors respond by stating that the Motion to Value "Should be Granted," and that Trustee's objection as to the tax refunds will be resolved in the order confirming the plan.

With respect to the $4,800.00 tax refund, Debtors argue that they will provide a copy of their 2014 tax return to the Trustee, and the difference in any tax refunds received over $4,800 during the life of the plan will be remitted to the Trustee.

Debtors also state that they have amended the Current Monthly Income ("CMI") to correct Line #37, to reflect only internet expenses, and not the cable bill, from $110 to $40. Debtors' attorney explains that when an individual utilizes the software program to calculate Debtors' expenses and income, [in this case EX-Filing], the individual paychecks are input and the system will total the categories and then insert them both on the CMI. Here, the estimated taxes comes from the actual taxes input into the system, which accounts for "amounts being exactly the same." Debtors' counsel states that the input for "HMO" was incorrectly listed as "Health Care" for $133.31, instead of "Health Insurance".

The "Education Expense" which is claimed for $200, which is identical to the amount Debtors listed on Schedule J for "Childcare and Education" expenses, were for children under 18 years. The response states that the expenses allowed are $187.50, to provide for debtors' 6 year old and an 8 year old. As the deductions "are...under the threshold for childcare AND education," the health care insurance has been correct, as has the internet deduction, and these objections should satisfy the Trustee's concerns.

DISCUSSION

The court is always troubled when a party sends their attorney to make factual representations to the court, but the party fails (or is unwilling) to provide evidence in support of the factual contentions. In such situations the court infers that while the party wants the benefit of the asserted "fact," the party is unwilling to so testify under penalty of perjury.

The Debtors state that they are "willing" to remit the difference of any tax refunds received during the life of the Plan over $4,800 to the Trustee, and the Debtors' Motion to Value, PGM-1 having been granted, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). In reviewing Schedule I (Dckt. 1 at 32-33), the Debtors report having gross monthly income of $9,447.48. From this there is listed ($2,845.85) in deductions, of which ($1,491.10) is for taxes and Social Security. The Deductions include a United Way Charitable contribution ($69.03), retirement ($300.00), and two Thrift Savings Plan contributions ($230.88).

The income listed on Schedule I includes $400.00 for "Tax Refund Normally $6k Con."

On Schedule J the Debtors lists $5,771.44 in monthly expenses. When deducted from combined monthly income (after deductions) of $6,001.63, yields Net Monthly Income of $230.19. The Debtor list three dependants, children ages 6, 8, and 21. No income is listed on Schedule I for the 21 year old dependant.

The Schedule J expenses include some items which raise questions, for which the Debtors have elected not to provide any testimony: (1) $1,200.00 food and housekeeping; (2) $650.00 transportation; and (3) $23.00 charitable contribution (which appears to merely be a "filler" item to account for monies which are not a real expense).

The Debtors' case is not helped by the misstating of the tax refund on Schedule I. While listing it under penalty of perjury as being $4,800.00 a year (showing the $400.00 a month in income), the sentence fragment next to it states that the refund is actually $6,000.00 a year, or $500.00 a month – 25% greater than the amount stated under penalty of perjury.

When such blatant misstatements are made and then when a party refuses to provide his or her attorney with testimony under penalty of perjury to support the "facts" being argued, the court has to question the veracity of all the statements made under penalty of perjury and the good faith of the parties. Parties being honest and truthful is not merely a requirement when the Chapter 13 Trustee, U.S. Trustee, or other parties catch them in a lie.

The Debtors have not provided the court with sufficient evidence to confirm the Plan. Further, the Debtors' misstatements have called into question whether any of the financial information in the Schedules is correct and truthful. This all indicates that the Debtors are not prosecuting this case and Chapter 13 Plan in good faith.

The Objection is sustained and confirmation of the Chapter 13 Plan is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 Objection to Confirmation is sustained and the Debtors' Chapter 13 Plan is not confirmed.

83. 14-25181-E-13 MICHAEL/CLAIRE STANLEY MOTION TO VALUE COLLATERAL OF

PGM-1 **Peter G. Macaluso** **THE GOLDEN ONE CREDIT UNION**
6-19-14 [15]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of The Golden One Credit Union, "Creditor" is granted.

The Motion filed by Michael and Claire Stanley, "Debtors", to value the secured claim of The Golden One Credit Union, "Creditor," is accompanied by the Debtors' declaration. The Debtors are the owner of a 2010 Kia Sedona, "Vehicle." The Debtors seek to value the Vehicle at a replacement value of $10,800.00 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 June, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,983.25. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $10,800.00. *See* 11 U.S.C. § 506(a). 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 Michael and Claire Stanley, "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 The Golden One Credit Union, "Creditor," secured by an asset described as 2010 Kia Sedona, "Vehicle," is determined to be a secured claim in the amount of $10,800.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,800.00 and is encumbered by liens securing claims which exceed the value of the asset.

84. 12-40682-E-13 CA-2 CHARLOTTE RICHARDSON Michael David Croddy

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY & ASSOCIATES, P.C. DEBTOR'S ATTORNEY
6-22-14 [32]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June

22, 2014. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Michael Croddy, the Attorney ("Applicant," or "Counsel") for Debtor Charlotte Renee Richardson ("Client) in this case, makes a Final Request for Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of September 20, 2012 through June 22, 2014.

Applicant provides a task billing analysis in his Declaration, Dckt. No. 34, and supporting evidence for the services provided. Applicant attaches the fee retainer agreement previously entered between Applicant and the Client, a pre-petition billing statement in which Debtor acknowledges that she understands and authorizes the payment of attorney fees and expenses, a report of time and expenses, and the resumes of the attorneys and paralegal in Applicant's firm and who worked on this case. Dckt. No. 36.

In the Declaration of Michael Croddy filed in support of the Motion, Dckt. No. 34, Applicant states that he spent 1.80 hours in meeting and consulting with the Debtor in the preparation of the case. Applicant states that spent 4.30 hours on data acquisition and input (and that the Legal Assistant spent 6.00 hours in this task category). The Applicant also spent .80 hours on the Motion to Value filed in this case (with the Associate Attorney in Applicant's firm spending .80 in preparing the Motion). The Applicant spent 1.00 hour in attending the 11 U.S.C. § 341 meeting of creditors, and 2.30 hours on preparing and filing a Motion for Attorney's fees.

Applicant states that prior to the filing of this case, Applicant received $1,500.00 from a fee retainer agreement entered between the Debtor and Applicant. Applicant states that the fees and costs previously allowed are not sufficient to fully compensate him for the services rendered.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the confirmation of a Chapter 13 Plan resulting in disbursements to the secured creditors holding claims in Debtor's vehicle, federal and state taxes, and two deeds of trust against Debtor's real property. Applicant's services also resulted in a successful Motion to Value the Secured Claim of Wells Fargo Bank, N.A., on a second deed of trust recorded against Debtor's residence. Order, Dckt. No. 21. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Chapter 13 Trustee filed a statement of non-opposition to this Motion on July 2, 2014.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Croddy, Senior Attorney	9.20	$375.00	$3,450.00
Eric M. Lee-O'Brien, Associate Attorney	1.80	$275.00	$495.00
Georgina Wells, Paralegal/ Legal Assistant	6.00	$125.00	$750.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,695.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final fees in the amount of $4,695.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 Case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $353.58 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Costs for Mailed Motion for Attorney Fees		$101.08
Scanned and eFiled Petition and Documents		$281.00
Mailed Motion to Value		$27.12
Total Costs Requested in Application		$409.20

Costs in the amount of $409.20 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees $ 4,695.00
Costs and Expenses $ 409.20

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case. After application of the $1,500.00 and $281.00 already paid to counsel in the retainer and filing fees, a total of $3,323.20 in compensation and costs is granted by this ruling.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Croddy ("Applicant"), Attorney for 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 Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Professional Employed by Chapter 13 Debtor

Fees in the amount of $4,695.00
Expenses in the amount of $ 409.20,

After application of the $1,500.00 and $281.00 already paid to counsel in the retainer and filing fees, a total of $3,323.20 in compensation and costs is granted.

IT IS FURTHER ORDERED that the Chapter 13 Debtor is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

85. 11-47484-E-13 CHRISTOPHER MALOLOT — MOTION TO SELL
WSS-3 W. Steven Shumway — 7-3-14 [73]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United

States Trustee on July 3, 2014. By the court's calculation, 19 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is denied without prejudice.

INSUFFICIENT NOTICE PERIOD

Federal Rule of Bankruptcy Procedure 6004 requires that notices of proposed sales, use, or leases of property, other than cash collateral, not in the ordinary course of business be given pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(2), (c)(1), (I), and (k). Federal Rule of Bankruptcy Procedure 2002(a)(2) mandates that twenty-one days' notice be provided to parties in interest for motions proposing the sale of property.

Here, the Movant did not give adequate notice of the Motion to Sell the real property pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(2), which requires at least twenty-one (21) days' notice be provided to all parties for motions proposing the sale of property. Movant set the motion for hearing under Local Bankruptcy Rule 9014-1(f)(2). The Certificate of Service filed, Dckt. No. 77, indicates that the Movant served the Motion, Notice of Hearing, and supporting documentation for this Motion to the United States Trustee, the Chapter 13 Trustee, creditors, and other parties in interest on July 3, 2014--19 days from the hearing date of July 22, 2014.

Because the Movant Debtor has not provided sufficient notice under Federal Rule of Bankruptcy Procedure 2002(a)(2), this motion is denied without prejudice.

If the court decides to waive the defect in service, however, the court will issue the following alternative ruling:

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as real property located at 10165 Frank Greg Way, Elk Grove, California.

Debtor moves this Court for an order allowing the sale of the property for $320,000 pursuant to Federal Bankruptcy Rule 6004. The property is encumbered by a first Deed of Trust, securing a loan currently held by Bank of America, N.A., and being serviced by Ocwen Loan Servicing with a balance owing as of the petition date of $550,930.

The property is further encumbered by a second Deed of Trust securing a loan currently held by Deutsche Bank National Trust Company as Indenture Trustee of the IndyMac Home Equity Mortgage Loan Asset-Backed Trust, Series 2007-H1. The second Deed of Trust is being serviced by

OneWest Bank, FSB with a balance owing as of the petition date of $61,100. The court had previously approved a sale of this property to a third party, but that sale did not occur.

Debtor has received another offer from a disinterested third party to purchase the real property for $320,000. The distribution of the proceeds of the sale will be as follows: the first lender will receive $261,643,75; the second lender will receive $8,500; the real estate brokers will receive $19,200 and Debtor will receive $3,000.00 as a relocation assistance amount.

RESPONSE BY TRUSTEE

The Chapter 13 Trustee responds to this motion stating that he has no objection to the proposed Motion to Sell real property located at 10165 Frank Greg Way, Elk Grove, California, but asks the court to consider the claim of Onewest that was filed on December 8, 2011. Debtors scheduled a second deed of trust, specialized loan servicing, to be paid through the plan. A claim was filed by Onewest on December 7, 2011, in the amount of $62,659.63 as a secured claim.

An order valuing the secured portion of the claim was granted on February 14, 2012, on this loan. Debtor will negotiate an amount for a lien release in the amount of $8,500.00. The claim was then transferred to Deutsche Bank, Trustee of Indymac Home Equity Mortgage, with the servicer being Specialized Loan Servicing, per a transfer filed on November 15, 2013, Dckt. No. 54. An amended claim verifying the creditor and servicer was filed on November 18, 2013, Dckt. No. 3-3, and a duplicate claim was filed on December 27, 2013. The Trustee asks that the court address this in the order if the Trustee is to pay the claim through the sale. Additionally, Trustee requests a copy of the final escrow closing statement within 14 days of the escrow.

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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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 Christopher Malolot, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Quantix Real Estate Group, LLC 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 $320,000.00, on the terms and conditions set forth in the Notice of Default Purchase Agreement, Exhibit A, Dckt. 76, 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 Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

5. 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.

86. 14-23685-E-13 LBG-2 | **PAUL LUDOVINA** | **Lucas B. Garcia** | **MOTION TO CONFIRM PLAN** | **5-30-14 [30]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2014. By the court's calculation, 63 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the

court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. Debtor cannot make the payments under the plan or comply with the plan under section 1325(a)(6). Debtor proposes to value the secured claim of Advanced Restaurant, which was heard and denied on June 10, 2014. Debtor has refiled the Motion. Creditor has filed a Claim, Claim No. 3, showing the $123,331.55 debt is owed by Debtor's business, which far exceeds the $15,825.83 of assets that the business had according to Debtor on Schedule B, Dckt. No. 1. Debtor has not adequately explained the income and expenses of the business and has not shown how the business can continue with the outstanding obligation which has been personally guaranteed by the Debtor.

2. If Debtor's business has substantial assets, it may have more than the $0.00 valued as listed on Schedule B, and unsecured claim holders may not be receiving what they should in the event of a Chapter 7 Liquidation under 11 U.S.C. § 1325(a)(4).

3. In Section 6.01 of the plan, Debtor proposes to pay attorney fees outside of the plan. It appears as if the intent is for counsel for Debtor to motion the court for attorney fees. However, based on this provision, it appears as if counsel intends to deduct from the initial retainer held in trust, at his own discretion for all prepetition fees. The Trustee objects to the plan provision in Section 6.01 as potentially contrary to the code under 11 U.S.C. § 1325(a)(1), 331, and 503.

REPLY OF DEBTOR

Debtor first responds to Trustee's objection by stating that the Motion to Value the Secured Claim of Advanced Restaurant should be granted. Second, Debtor states that the Trustee has not requested any documentation to either suggest a desire to further investigate the business or to ensure that the balance sheets and profit and losses supplied to the trustee are accurate. Debtor asserts that there are no facts related to the current state of Trustee's investigation into the value of the business being alleged, nor has the Trustee indicated to debtor or debtors counsel that further information is needed. Third, Debtor states that Debtor's attorney will file motions for fees.

The court is denying Debtor's second Motion to Value the Secured Claim of Advanced Restaurant Finance, LLC, LBG-3, on this hearing date. Since the Motion is denied, the Debtor's plan does not have sufficient monies to pay

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

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

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

87. 14-23685-E-13 LBG-3 — PAUL LUDOVINA — Lucas B. Garcia — MOTION TO VALUE COLLATERAL OF ADVANCED RESTAURANT FINANCE, LLC — 7-1-14 [46]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 1, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor,

Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Value secured claim of Advanced Restaurant Finance, LLC, "Creditor" is denied without prejudice.

The Motion filed by Paul Ludovina, "Debtor", to value the secured claim of Advanced Restaurant Finance, LLC, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of Ludy's Main Street BBQ, which Debtor describes as the subject "Asset." The Debtor seeks to value the Asset at a replacement value of $8,000.00 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 lien on the asset secures a debt owed to Creditor with a balance of approximately $123,221.55. The Court is unclear, however what property the "Asset" encompasses that is to be valued at $8,000. Debtor's Declaration, for instance, mentions several improvements and renovations to the restaurant of substantial cost. The Motion to Value and Declaration do not specify whether the "Asset" refers only to the limited liability corporation or the physical space of the restaurant, which may or may not include additional personal property.

Debtor's pleadings lack the clarity of pleadings that state grounds for relief with the particularity necessitated by Federal Rule of Bankruptcy Procedure 9013. This particularity and clarity in pleading the Debtor's basis for relief under 11 U.S.C. § 506(a) would certainly help the court understanding of how Debtor arrived at his valuation of the "Asset". Here, the court is uncertain of the exact nature of the property that is at issue in Debtor's Motion. Without an understanding of what property the Debtor seeks to value with this Motion, the court cannot determine the value of the asset and issue an order valuing this particular asset and the secured portion of the Creditor's claim.

Based on the foregoing, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Paul Ludovina, "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 denied without prejudice.

88. 12-30588-E-13 DIANE/OSVALDO MALDONADO MOTION TO APPROVE LOAN
ET-5 Matthew R. Eason MODIFICATION
6-13-14 [93]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 13, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Diane and Osvaldo Maldonado ("Debtor") seeks court approval for Debtor to incur post-petition credit. The Debtors state in their Motion, however, that Green Tree Servicing, LLC is the holder of the loan that Debtors wish to modify, and that Green Tree Servicing, LLC has submitted a forma lan modification to Debtors.

Debtors state that Green Tree Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce

Debtor's mortgage payment from the current $2,163.81 a month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 4.625% for the duration of the mortgage (40 years).

The Motion is supported by the Declaration of Diane and Osvaldo Maldonado. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Debtors seek modify the loan "held" by "Green Tree Servicing LLC." However, it has been repeatedly represented in this court that loan servicing companies including Green Tree Servicing are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the subject loan "held by Green Tree Servicing," after the claim was transferred from Bank of America, N.A. to Green Tree Servicing LLC indicates that Debtors have no knowledge of who the actual creditor in interest is.

The Notice of Intent to Transfer Claim cited by Debtors, as filed on November 21, 2012, provides no information on the transferor, the transferee, and whether the underlying obligation (the Promissory Note) of the loan was transferred along with a deed of trust against the Debtors' property. The Notice of Transfer of Claim Other than for Security, designated as Dkct. No. 47. states only that an interest has been transferred from Bank of America, N.A. to Green Servicing, LLC.

The transfer notice gives scant detail on what is actually being transfer; even when an Assignment of Deed of Trust appears in the court record, that document may not actually assign the Note which is secured by the Deed of Trust. The mere assignment of a deed of trust does not in and of itself transfer the obligation it secures. It is also well established law that an assignment of a deed of trust (or other security) is of no force and effect if would work to transfer the security to anyone other than the person who is the creditor on the obligation secured. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034 (9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); and Cal. Civ. Code §2936.

No assignment or transfer of claim appears on the docket transferring the Note. The court is not certain how Debtors can name Green Tree Servicing, LLC as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation.

Green Tree Servicing, LLC, filed Proof of Claim No. 13 in this case in September 19, 2012, asserting a claim for money loaned in the amount of $376,059.73. The basis for perfection is listed as a mortgage/ deed of trust. Green Tree Servicing, LLC. identifies the Creditor as Bank of America, N.A., and states in the Proof of claim that payments on the claim should be sent to Bank of America, N.A., at that entity's Dallas, Texas address. The Claim is signed by an attorney from Pite Duncan, LLP.

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

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

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

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

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause and Green Tree Servicing, LLC has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

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

Further, if Green Tree Servicing, LLC has expanded its business to purchase notes, how it will provide that information to the federal courts.

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 for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Green Tree Servicing LLC. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

FAILURE TO COMPLY WITH FRBP 4001(c)

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales,* No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, Debtors have not provided a copy of the subject loan modification agreement. While some terms are included in the motion, Local Bankruptcy Rule 4001(c)(1)(a) requires that a copy of the agreement must be provided to the court. Without a copy of the loan modification agreement that Debtors seek to be approved, the court cannot determine whether the modification agreement is reasonable and beneficial to the Chapter 13 Debtors' interests. The court has no idea what other terms and conditions may be stated (or buried) in the actual loan modification agreement.

Additionally, the utility and import of attaching the loan modification agreement becomes even greater, given Debtors' assertion that Green Tree Loan Servicing, LLC, a loan servicing agent, is the actual lender in the obligation and holder of the subject claim. The actual loan modification agreement will help shed some light for the court and for the debtors on whether Green Tree Servicing, LLC, is the actual entity offering the modification, or whether there is another actual creditor listed who is entering into a contract with the Debtors to modify the loan.

Without this agreement, however, the court cannot review the precise terms of the agreement and the language of the agreement, to determine who is an actual party to the modification. For now, the court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The court also refuses to blindly approve the terms of an modification agreement that has not been shown to the court. 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 to Approve the Loan Modification filed by Diane and Osvaldo Maldonado 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.

89. 14-25993-E-13 KEVIN/DIANE GROSS **MOTION TO VALUE COLLATERAL OF**
SAC-1 Scott A. CoBen **U.S. BANK, N.A.**
6-24-14 [18]

Final Ruling: No appearance at the July 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, the respondent Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of U.S. Bank, N.A., "Creditor," is granted.

The Motion to Value filed by Kevin and Diane Gross, "Debtors" to value the secured claim of "Creditor" is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 19720 Legacy Lane, Nevada City, California, "Property." Debtors seek to value the Property at a fair market value of $350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The senior in priority first deed of trust secures a claim with a balance of approximately $416,548.00. Creditor's second deed of trust secures a claim with a balance of approximately $45,987.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v.*

Investors Thrift (In re Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kevin and Diane Gross, "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 U.S. Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 19720 Legacy Lane, Nevada City, 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 $350,000.00 and is encumbered by senior liens securing claims in the amount of $416,548.00, which exceed the value of the Property which is subject to Creditor's lien.

90. 10-27399-E-13 DAN GOODLOW — CONTINUED MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 4-11-12 [37]

CONT. FROM 3/25/14

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

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

Below is the court's tentative ruling.

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

Proper 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 April 11, 2012. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The 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 decision is to deny the Motion to Confirm the Modified Plan.

PRIOR HEARINGS

On January 9, 2013 the court continued the hearing to the date of the status conference in adversary proceeding number 12-2195.

On October 17, 2012 the court continued the hearing to allow the court to conduct a status conference. The Debtor is prosecuting an adversary proceeding which must be resolved or made part of the Chapter 13 Plan.

On April 25, 2013 the court continued the hearing to follow the tentatively schedule June 14th BDRP date in adversary proceeding number 12-2195.

On June 26, 2013 the court continued the hearing to follow the tentatively schedule June 14th BDRP date in adversary proceeding number 12-2195.

On November 5, 2013, counsel for Dorice Goodlow filed a motion to withdraw as her counsel in an adversary proceeding which must be resolved as part of a plan in this case.

At the March 25, 2014 hearing, the Trustee, Debtor, and Debtors counsel confirmed that upon the payment of an additional $5,227.72, the Debtors plan will be fully funded and the final disbursements to pay off the secured claim of EMC and the attorneys fees can be made in this case. Upon the final funding by the Debtor, counsel for the Debtor shall forward the order confirming the modified plan to the Trustee, which shall be lodged with the court when approved by the Trustee. Dckt. No. 85.

Adversary Proceeding

The Debtor filed adversary proceeding number 12-02195 to determine the estate's interest in the Bald Creek Road Property and that of asserted co-owners. The proposed plan modification does not take that litigation into account and the consequences of a determination that the Debtor does not have any interest in the property. The court cannot identify what is asserted to be the "unknown transfers of title to [the Debtor's] property."

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor seeks to modify the plan because of a restraining order was entered against him, title to his property was allegedly

transferred to others without his knowledge, and he has retained an attorney to defend him in an unidentified action. Debtor does not explain how these issues changed his ability to make plan payments; no expense related to any of these matters is listed on Schedules I or J. However, Schedule I states that Debtor is not residing in his home and is "in a fight over the home." Debtor does not budget for rent, but is proposing to maintain mortgage payments on the home he does not live in.

The Trustee challenges the feasibility of the proposed plan payment in light of the unknown costs associated with the attorney the Debtor has hired — who may be a professional of the estate — and the unknown costs associated with the Debtor's living arrangements outside of his home. These unknown costs impair the feasibility of the proposed plan payment and are cause to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, the Trustee suggests that payment on the claim secured by the loan may work unfair discrimination to holders of general unsecured claims. However, the court declines to reach this issue in light of the pending adversary proceeding the Debtor has commenced to determine his interest in the property and the independent cause to deny confirmation.

The court is further concerned that the proposed modification to the plan does not comport with the reality of this case. The Motion requesting the modification does not state with particularity the grounds relating to a restraining order or possession on the residence being changed by an order of a non-bankruptcy court. The confirmed plan in this case provides that the property of the estate has not revested in the Debtor. (Dckt. 5). The Motion merely instructs the court to read the Debtor's declaration and choose whatever statements made therein the court thinks the Debtor should allege as the grounds for this Motion.

The declaration makes a reference to there being a domestic violence restraining order, an unknown transfer of title to the property (which is property of the bankruptcy estate), and that the Debtor now has to hire an attorney to represent him (presumably with respect to the restraining order and title issue). The Debtor testifies that he is $2,500.00 in arrears in the confirmed plan, and that he owes $6,552.67 on the obligation secured by his home (which is the subject of an unidentified title transfer). He further states that this claim, which is held by Acqua Loan Servicing, will be paid off during the term of the plan.

In support of the Motion the Debtor has provided current financial information using the Schedule I and J forms filed as Exhibits 1 and 2. Dckt. 40. These exhibits are not authenticated by the Debtor and he does not attest that the information provided therein is true and correct under penalty of perjury. The information provided therein raises significant questions.

First, the Debtor states that the total income for he and his wife is $1,084.00, consisting solely of his social security income. No income is shown for his wife, who is listed as retired. Though not stated by the Debtor, presumably there has been a separation and her income of $1,400 a month (as stated on Original Schedule I, Dckt. 1) is no longer available to the Debtor. The expense information, Exhibit 2, lists only $409 a month in

expenses, which does not include any utilities, insurance, medical expenses, taxes or other amounts. It provides for a food expense of $150.00.

Second, the information concerning the Debtor's interest in real property is conflicting. On Schedule A the Debtor lists one property identified as 1148 Bald Rock Road, Berry Creek, California. Dckt. 1. It states that the Debtor's interest in the property is $184,500, and the property is subject to a secured claim in the amount of $129,000. Further on Schedule A the Debtor states that he has a 1/4 interest in this property and that 1/4 interest is worth $87,500.00.

Schedule D states that EMC Mortgage Corporation has a 1st Deed of Trust against an unidentified property in the amount of $42,600, with the collateral having a value of $148,000.00. (This appears to be a typographical error given that on Schedule A the Debtor states that the only real property he owns has a value of $184,000.) A second secured claim is listed in the amount of $20,000.00 secured by a judgment lien, with the Debtor stating that he asserts this obligation has been paid in full and is listed only as a precaution.

On Schedule C the Debtor states that he asserts a $150,000.00 homestead exemption. The Bald Creek Road Property is listed as the Debtor's address on his petition.

In the present Motion the Debtor asserts that the creditor having a deed of trust on the Bald Creek Road Property has a claim of only $6,552.67, not the $42,600 as listed on Schedule D.

On October 2, 2012 Debtor filed a supplemental declaration that is identical to the original declaration filed in support of the motion to modify. Debtor has not provided any additional evidence that would resolve Trustee's concerns regarding attorneys' fees for the adversary proceedings or the unknown costs associated with the Debtor's living arrangements outside of his home. Debtor still has not explained how these issues affect his ability to make plan payments.

Status of Adversary Proceeding

In addition to unresolved issues raised by the Chapter 13 Trustee, the Status Conference Statement filed on October 10, 2012 indicates that issues surrounding the ownership of the real property in the adversary case have not been resolved. (Adv. Proc. No. 12-02195, Dckt. 33).

The court's review of the docket in Adversary Proceeding Number 12-02195 indicates that the following has occurred since the court continued the hearing in bankruptcy case number 10-27399: the court entered an order allowing Wargo & French LLP to withdraw as counsel of record for EMC Mortgage Corp. and permitting McCarthy & Holthus LLP to substitute in as counsel of record. On October 17, 2012 the court continued the status conference in the adversary proceeding in order to allow the parties to negotiate the terms of a potential settlement since all parties are now represented by counsel. (Dckt. 39). The Status Conference Statement filed by Dorice Goodlow in Adversary Proceeding 12-2195 advises the court that the parties are proceeding with the Eastern District Bankruptcy Dispute

Resolution Program (mediation), with the BDRP Conference set for June 14, 2013, with Russell Cunningham serving as the mediator. There is no indication that the parties have reached a settlement.

On July 22, 2013 the parties filed a status conference statement. The statement indicates that the parties made great progress towards resolving the dispute after the BDR conference. Plaintiff's counsel submitted a written proposal to Defendant and hopes for fair and equitable resolution of the matter. Defendant asserted that she has been in the hospital with pneumonia and has not conferred fully with counsel and is hopeful when she is released from the hospital the matter will be concluded shortly. Defendant was indicated to be receiving medical treatment, which impaired the ability of the parties to consummate a settlement in that Proceeding which would then allow for the confirmation of a plan. Civil Minutes, Dckt. No. 77,

The latest Status Conference Statement, filed by Plaintiff Debtor, indicates that Peter G. Macaluso, Counsel for Plaintiff Debtor, has filed a Motion to Withdraw as Attorney; in light of Plaintiff's expected lack of Counsel, Plaintiff Debtor requested and was granted an allowance of a few weeks to seek new counsel. The Status Conference was continued to this hearing date, and an Order to Show Cause was issued by the court to discern why the adversary case should not be dismissed without prejudice for lack of prosecution by all parties.

On February 18, 2014, the court issued an Order to Show Cause, ordering Plaintiff's attorney, Peter G. Macaluso, to show cause as to why the court should not dismiss Adversary Proceeding No. 12-2195 for the failure to prosecute. It was further ordered that any opposition to the issuance of the Order to Show Cause shall be in writing and filed with the court in compliance with Local Bankruptcy Rule 9014-1, and must be filed at least fourteen (14) days before the date of the hearing date. The court further ordered that Peter G. Macaluso appear in the hearing in person, and that no telephonic appearance is authorized for the order to show cause. Dckt. No. 82 in Adv. Proc. No. 12-02195.

On March 31, 2014, the court sustained an Order to Show Cause as to why the court should not dismiss Adversary Proceeding No. 12-2195 for the failure to prosecute. Dckt. No. 93. The Adversary Proceeding was dismissed without prejudice.

Debtor's Supplemental Declarations and Supplemental Motion to Modify

On February 27, 2014, Debtor filed a supplement to the Motion to Modify the Chapter 13 Plan. Dckt. No. 81. Debtor states that the intent of the First Modified Plan was to pay the Mortgage lender EMC Mortgage in full, over 36 months. Additionally the Plan purposes to pay attorney fees, remove a Judicial Lien, with general unsecured creditors 0% of their allowed claims. Debtor was to pay a minimum of $28,025 into the Plan over the 36 months, and has Debtor has paid a total of $26,585 and is in the 47th month of the Plan. Debtors last payment was in March of 2013.

The Trustee has $11,905.84 on hand to be disbursed, with the last disbursement on the case in November 2011. The balance on the case consists

of the Class 1 Claim of EMC owed $6,552.67 plus interest and attorney fees of $9,465.00. With Trustee fees and interest it is estimated that the balance owed is $17,133.56 less monies on hand of -$11,905.84 the Debtor needs to contribute an additional $5,227.72 to end the plan.

Nothing further has been filed on the docket revealing that Debtors' plan has been fully funded, and the final disbursements to pay off the secured claim of EMC and the attorneys fees has been made in this case. With respect to the current Motion to Modify, the Debtor has not addressed the Trustee's or the court's concerns with regard to feasibility of the proposed plan. Debtor has not filed revised schedules, correcting the Schedules' reporting of Debtor's wife's income, and clarifying Debtor's interest in the property known as 1147 Bald Rock Road, and the property which secures the debt owed to the EMC Mortgage Corporation. Further, Debtor's potential ownership interest in the Bald Creek Road Property has not been resolved, and it appears that the adversary case which would adjudicate the issue of who has ownership of the title of the property, has been dismissed for lack of prosecution.

The court first addressed these issues at the initial hearing on May 22, 2012 and has continued the hearing multiple times to allow the Debtor to file supplemental information. The Debtor has not responded to the Trustee and the court's concerns accordingly, and instead files non-responsive pleadings that asserts his right to confirmation of the modified plan in this case. In its current form, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

91. 14-22734-E-13 GERALD/VIRGINIA MARTINEZ — MOTION TO VACATE DISMISSAL
Michael O'Dowd Hays — 7-17-14 [55]

No 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.

Notice Provided: The Order Setting Hearing was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on July 21, 2014. 1 day notice of the hearing was provided.

Debtors filed an *ex parte* application for the court to vacate the dismissal of their case. Debtor states that at the June 10, 2014 hearing on the Trustee's Objection to Confirmation, the court continued the hearing on the Trustee's Motion to Dismiss (which had been set but not heard) for September 10, 2014. The civil minutes on the Trustee's Objection to Confirmation does not state that the court continued the Motion to Dismiss. Dckt. 39. Nor does there appear to be a notice filed by either party or an order by this court continuing the hearing on the Motion to Dismiss.

The court posted its tentative ruling on July 8, 2014 at 1:28 p.m., tentatively granting the Motion to Dismiss. On July 9, 2014, the court heard the Trustee's Motion to Dismiss and Counsel for Debtor failed to appear for the hearing. Without an appearance from the Debtor, and the delinquency still outstanding, the court granted the motion. See Civil Minutes, Dckt. 51.

Counsel for Debtor states that he had no reason to appear at the hearing on the Trustee's Motion to Dismiss because of the alleged statement by the court that the motion would be continued to September 10, 2014.

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 Vacate the Order Dismissing this Chapter 13 case (Dckt. 53) filed by Gerald and Virginia Martinez 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 Vacate the order dismissing the case is ------- and the Order of this Court filed on July 14, 2013 (Dckt. 53) is ---------.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee's Motion to Dismiss is ------------.