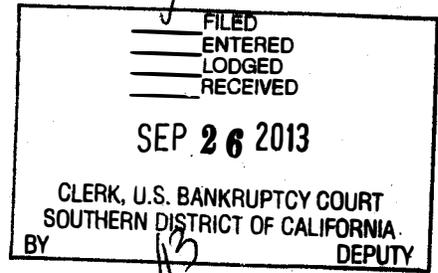


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



8 UNITED STATES BANKRUPTCY COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

11 In re ) Case No. 11-19811-PB13

12 KAREN D. THOMAS, )

13 Debtor. ) ORDER ON CHAPTER 13

14 ) TRUSTEE'S MOTION TO

15 ) MODIFY PLAN

16 )

15 Debtor's plan was confirmed on February 10, 2012. On April

16 28, 2014, Debtor filed a motion for authority to sell her

17 residence at 5565 Adobe Falls (Property). In the motion Debtor

18 asserted that the "proceeds the Debtor is to receive is within

19 the amount of the homestead amount claimed in her Chapter 13

20 case." However, the motion did not seek a ruling to that effect.

21 Initially the Trustee filed opposition to the motion on the

22 ground that Debtor was not entitled to a homestead exemption

23 because she had not recorded a Declaration of Homestead.

24 However, on June 6, 2014, the Trustee changed tack. He

25 simultaneously withdrew his opposition to the sales motion, and

26 filed the motion to modify the plan, based upon the argument that

1 Debtor could not exempt the proceeds, and that such proceeds  
2 ought to be applied to increase the distribution to creditors.

3 On June 20, 2014, the Court granted Debtor's motion  
4 authorizing the sale of the Property. The Court made no ruling  
5 on whether the proceeds were exempt.

6 On July 23, 2014, the Court held a hearing on the Trustee's  
7 Motion to Modify. At the hearing, counsel for the Debtor  
8 informed the Court that the Property had not been sold. Rather,  
9 Debtor hoped to get a ruling from the Court on the exemption  
10 issue before going ahead (or not) with the sale. The Court took  
11 the Trustee's motion under submission.

12 Upon reflection the Court concludes that the motion to  
13 modify cannot be granted at this time. Pursuant to the motion,  
14 the Trustee "seeks to increase the pro-rata paid to the general  
15 unsecured creditors ... to include the non-exempt proceeds from  
16 the sale of Debtor's dwelling." However, as of present date  
17 there are no such proceeds. If the Debtor goes forward with the  
18 sale and proceeds are generated, the Trustee is of course  
19 entitled to renew the motion.

20 At the hearing counsel for the Debtor suggested that Debtor  
21 wanted the Court to rule on the exemption issue prior to the  
22 sale, so she could decide whether or not to proceed with the  
23 sale. However, this Court, like all federal courts, lacks  
24 jurisdiction to render advisory opinions. The Court "may not  
25 decide questions that cannot affect the rights of litigants in  
26 the case before them or give opinions advising what the law would

1 be upon a hypothetical state of facts." Chafin v. Chafin, \_\_\_  
2 U.S. \_\_\_, 133 S.Ct. 1017, 1023, 185 L.Ed.2d 1 (2013).

3 For the reasons set forth above, the Trustee's motion to  
4 modify is denied without prejudice. The Court makes no ruling on  
5 whether Debtor would be entitled to claim an exemption in any  
6 proceeds of her Property, should she decide to sell.

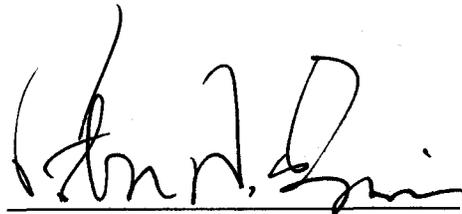
7

8 IT IS SO ORDERED.

9 DATED: SEP 26 2014

10

11



12

PETER W. BOWIE, Judge  
United States Bankruptcy Court

13

14

15

16

17

18

19

20

21

22

23

24

25

26

**UNITED STATES BANKRUPTCY COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

In re Bankruptcy Case Name: KAREN D. THOMAS

Case No.: 11-19811-PB13

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**ORDER ON CHAPTER 13 TRUSTEE'S MOTION TO MODIFY PLAN**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

**Jenny Judith Ha**

Thomas Billingslea, Jr., Ch 13 Trustee  
401 West "A" Street  
Suite 1680  
San Diego, CA 92101

**Thomas K. Shanner**

Shanner & Associates  
7851 Mission Center Court, Ste 208  
San Diego, CA 92108

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on September 26, 2014.

  
\_\_\_\_\_  
Lisa Cruz, Deputy Clerk