

The Chapter 7 Trustee, Eric J. Nims (“Chapter 7 Trustee”) opposes confirmation of the Plan on the basis that Hsin-Shawn Cyndi Sheng (“Debtor”) has not proposed the plan in good faith. Chapter 7 Trustee argues the plan was filed in bad faith based on the following:

1. Debtor concealed her sale of her real property commonly known as 45030 Cougar Circle, Fremont, California (the “Cougar Circle Property”) which occurred on June 7, 2017, less than 60 days before the petition date. Declaration ¶ 4, Dckt. 32.
2. Debtor is leasing her real property commonly known as 2769 Barrington Terrace Ave., Fremont, California (the “Barrington Terrace Property”), but has not accounted for and paid into the Chapter 13 Plan the rents derived from that property. *Id.*, ¶¶ 5-10. The court issued an Order granting Chapter 7 Trustee’s Motion For Turnover on July 3, 2018, and requiring Debtor to turnover possession and rents from the Barrington Terrace Property. Order, Dckt. 109.
3. Debtor lists on her Schedules having an interest in a Chase Bank checking and savings with a balance of \$47,550.81, of which only \$929.00 has been claimed as exempt. Chapter 7 Trustee has made two requests for turnover of the non-exempt funds (in November 2017 and June 2018), but Debtor ignored those requests and liquidated over \$35,000.00 of the non-exempt funds before the [Chapter 7] Trustee was able to freeze the accounts. Declaration ¶¶ 11-13, Dckt. 32.

Debtor filed Case No. 17-25114 under Chapter 7 on August 2, 2017. While Debtor received a discharge in that case, the case is still open.

DEBTOR’S EXHIBIT IN OPPOSITION & DECLARATION

Exhibit

On March 6, 2019, Debtor’s counsel filed a document titled “Debtor’s Second Exhibit in Opposition to Objection to Confirmation.” Dckt. 46.

The Exhibit on page 2 of the pdf includes a document titled “§ 1031 Exchange Summary,” and has a header from the company Asset Preservation, Inc. *Id.* at p. 2. The Exchange Summary appears to indicate the Cougar Circle Property was exchanged on June 7, 2017 for a 0.4695 percent interest in CF Lease Portfolio I DST, and CF Net Lease Portfolio V.

Beginning on pdf page 3 is a document titled “Assignment of Replacement Property Purchase Agreement.” *Id.* at p. 3. The Agreement was executed on July 11, 2017 and indicates Debtor entered into a transaction with Asset Preservation, Inc. for an exchange of Debtor’s property for replacement property. The Debtor’s assigned property is not defined or identified in that document.

Debtor also filed an Exhibit on March 7, 2019. Dckt. 47. The subsequent Exhibit appears to be identical to the one filed March 6, 2019.

Declaration

On March 8, 2019, Debtor filed a Declaration of Debtor (the same document appears to have been filed twice).Dckts. 49, 50. The Declaration of Debtor states under penalty of perjury:

Documents filed as items 46 and 47 are correctly dated authentic Documents generated the ordinary course of my business affairs.

Service

A Proof of Service was filed March 8, 2019. The Proof testifies that the Exhibits and Declaration were served on the Chapter 7 Trustee and the Chapter 13 Trustee, David Cusick (“Chapter 13 Trustee”) on March 8, 2019. Dckt. 52.

DEBTOR’S FIRST SET OF POINTS & AUTHORITIES IN OPPOSITION TO OBJECTION TO CONFIRMATION

Debtor filed a document titled “First Set of Points & Authorities in Opposition To Confirmation” (the “Memo”) on March 13, 2019. Dckt. 54. The Memo begins citing certain sections of 11 U.S.C. § 541 defining property of the estate in a bankruptcy case, and the cites to Delaware Statutory Trust law as to “insulation of trust assets from attachment.”

The Memo does not actually quote Delaware law, Delaware case law, federal case law, or other state law addressing the identified statute, but appears to have a quote from a commentary paraphrasing a statute. ^{FN. 1}

FN. 1. At this juncture the court is reminded of the adage stated by the Hon. Lauren S. Dahl, a then bankruptcy judge with this court, more than thirty-five years ago, concerning such paraphrasing, in which he concluded: “When I see an attorney providing a short paraphrasing of a case I generally believe that it does not state what is paraphrased. If it did, I would be provided with a short, clear direct quote from the case.”

A review of Delaware law discloses that “Section 3502” (the complete citation shown below for this section relied upon by Debtor and Debtor’s Counsel) provides:

§ 3502. Procedure for appointment of trustee.

The Court of Chancery may make any appointment or direction under § 3501

[appointment of a replacement trustee] of this title, by an order made in any cause pending in that Court or upon petition of 1 or more of those interested in the trust or by the remaining or surviving donee or donees of any such power or powers. The Court of Chancery may, upon presentation of any such petition, take such testimony as it deems necessary to satisfy the Court that the granting of such petition will not impair the beneficial interest of any of the donees and other beneficiaries under such trust. Such testimony may be taken orally, at the bar of the Court, or by depositions.

12 Del. C. § 3502 (emphasis added). It is unclear how an order of the Court of Chancery is relevant to Debtor's and Debtor's Counsel's current argument.

Debtor also provides a website address/link ^{FN.2.} to an article in support of its argument that Debtor's Delaware Statutory Trust is protected from all judgment creditors of such beneficial owner so long as the trust assets are held in Delaware by a bank or trust company.

FN.2. The link provided is: <https://www.morrisjames.com/newsroom-articles-292.html>. A review of this article discloses that it does not include any specific statutory citations, other than a general reference to the "Delaware Statutory Trust Act." No case law is discussed, whether state or federal, and no discussion of federal statutory and case law is addressed. There is a general statement to the effect that people may be able to put assets in such a trust and the authors say that such might be a device to keep such assets from being administered in a bankruptcy case (while apparently allowing the debtor to continue to own such assets).

At issue appears to be a self-settled "trust" by the Debtor in which she purports to have transferred her assets into a trust for her benefit, but asserts that by transferring the assets in a trust for her benefit she can move them beyond federal law. No authority is stated for a proposition that a debtor can transfer assets to benefit him/her/itself beyond his/her/its creditors.

While making a general reference to Delaware law, Debtor who resides in California, had and has her assets in California, sold real property in California, and is now seeking relief in multiple bankruptcy cases in the Eastern District of California does not address applicable California law (in addition to federal law) as to her relationship to creditors, her obligations to creditors, and how her assets may be held, transferred, and administered. No basis is asserted by Debtor's Counsel under any applicable law is provided for the proposition that Debtor could take assets, transfer assets, keep the assets for her benefit, and hide/block/abscond/insulate such assets from her creditors, and more significantly the Chapter 7 bankruptcy trustee and such trustee's powers arising under federal bankruptcy law.

It appears that Debtor admits that she has property in banks in Delaware that are property of the bankruptcy estate, but asserts that since they would not under the identified Delaware statute be subject to "attachment," then they are beyond the reach of Congress in defining property of the bankruptcy estate or the federal courts.

First, the Chapter 7 Trustee's asserted rights do not appear to be those of a mere creditor, but as the "owner" of the assets which are property of the bankruptcy estate. Second, the United States Bankruptcy Code enacted by Congress pursuant to Article I of the United States Constitution is part of the 'supreme law of the land' which cannot be subverted by state law. Third, the Debtor remains subject to the jurisdiction of the federal courts and has to comply with orders of the federal court, which includes order to turn over any property of the bankruptcy estate.

No Proof of Service was filed introducing evidence that the Memo was served on any party in interest.

DISCUSSION

Chapter 7 Trustee argues the present plan filed by Debtor was not proposed in good faith. Chapter 7 Trustee presented evidence that Debtor in her prior case concealed the sale of the Cougar Circle Property, refused to turnover rents of the Barrington Terrace Property after ordered by the court, and liquidated non-exempt assets of the Estate.

In opposition of the Objection Debtor only filed an Exhibit, Declaration, and the Memo (however a hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) does not require a opposition to be filed).

The Declaration seeks to authenticate the Exhibit which appears to be documents in support of the Cougar Circle Property being exchanged for replacement property and not sold. Dckts., 46-47, 49-50. The testimony provided states:

Documents filed as items 46 and 47 are correctly dated authentic Documents generated the ordinary course of my business affairs.

Declaration, Dckts. 49, 50.

While concluding that the exhibits are what they are, the testimony does not actually provide evidence that the witness (Debtor) has knowledge of the Exhibits. *See* FED. R. EVID. 901(b)(1). The documents are not identified, or explained, and it is not known what if anything Debtor knows about the documents—other than Debtor stating the Exhibits are documents generated in the ordinary course of her business affairs.

Even assuming the Exhibits are authenticated, it is difficult to ascertain what Debtor's argument here is. The Memo dumps on to the court various code sections and a reference to an article in support of the argument Debtor's Delaware Statutory Trust is protected from all judgment creditors of such beneficial owner so long as the trust assets are held in Delaware by a bank or trust company. The court generally declines the opportunity to assemble legal arguments for parties.

At no point is it explained what is in the trust—presumably Debtor is arguing the sale (or exchange) of the Cougar Circle Property is the trust protected here. This argument makes little sense in the context of the plan confirmation. Chapter 7 Trustee is arguing Debtor is proposing the plan in bad

faith, among other reasons, because Debtor sought to syphon proceeds of a sale of the Cougar Circle Property from the Estate. Debtor is effectively revealing a scheme whereby Debtor exchanged assets of the Estate, making them insulated to attachment and thereby unreachable in the Bankruptcy Case.

Apart from possibly conceding bad faith, Debtor provides no actual legal authority for his arguments. Two code sections are referenced, and then the court is directed to an article. No persuasive or binding case law is provided supporting that the Delaware Statutory Trust law preventing attachment would apply here to keep the Debtor's interest in the trust from the Chapter 13 case.

Federal Rule of Bankruptcy Procedure 9011 requires claims, defenses, and other legal contentions to be warranted by existing law or by a nonfrivolous argument. From the pleadings filed in opposition of the Objection, Debtor's counsel has not met this requirement.

At the hearing, xxxxxxxxxxxxxxxx.

Debtor does not respond to Chapter 7 Trustee's points on rent proceeds and liquidation of non-exempt bank account monies.

Ruling

Chapter 7 Trustee's objections are well-taken. The Plan does not appear to have been proposed in good faith. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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 Chapter 7 Trustee, Eric J. Nims ("Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. [19-20302-E-13](#) **HSIN-SHAWN SHENG**
[DPC-1](#) **Richard Jare**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
3-4-19 [35]

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 4, 2019. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”) opposes confirmation of the Plan on the basis that:

- A. Hsin-Shawn Cyndi Sheng (“Debtor”) is \$1,000.00 delinquent in plan payments to the Trustee to date.
- B. The Plan does not appear feasible because:
 - i. Debtor’s Plan steps up payments from \$1,000.00 to \$3,500.00 in month 5. This step up depends on rental income currently within Debtor’s Chapter 7 case, which has not been closed. The plan is not feasible unless the Chapter 7 case is closed.

- ii. Debtor utilizes an Ensminger provision in the proposed plan while seeking a loan modification secured by her property commonly known as 2901 Corriente Way in Lincoln, California. However, Trustee doubts the likelihood of successful modification where Debtor's only source of income is \$1,198.00 from Social Security.

Additionally, Debtor's proposed adequate protection payments appear to be far from adequate. Debtor's is \$535,000.00 in arrears on the debt and the monthly contractual installment is \$8,177.00. The proposed plan payment is only 7 percent of the contractual installment through month 4 and 35 percent thereafter.

- iii. Debtor utilizes an Ensminger provision in the proposed plan while seeking a loan modification secured by her property commonly known as 2901 Corriente Way in Lincoln, California. However, this loan modification is not likely to apply to the claim of Verdera HOA, which is stated to be \$26,000.00 in arrears with an ongoing monthly payment of \$238.00.
- iv. Trustee believes Debtor seeks to bind the Chapter 7 Trustee, Eric Nims ("Chapter 7 Trustee") through the provisions of the proposed plan.
- v. Debtor is attempting to stipulate through the proposed plan to waiving her right to a discharge, which is not permitted by Federal Rule of Bankruptcy Procedure 4004(a).

C. Debtor sold property a few months before filing her Chapter 7 bankruptcy case and realized a profit of \$690,000.00. Therefore Debtor has looming capital gains tax liability which has not been assessed.

G. Chapter 7 Trustee has filed an Objection to the proposed plan.

Debtor filed Case No. 17-25114 under Chapter 7 on August 2, 2017. While Debtor received a discharge in that case, the case is still open.

DEBTOR'S EXHIBITS IN OPPOSITION & DECLARATION

Exhibit 1

Debtor filed a document titled "Debtor's First Exhibit in Opposition to Objection to Confirmation" on March 5, 2019. Dckt. 43. The Exhibit 1 appears to be a computer screen shot which purports to show Debtor paid \$1,000.00 on March 4, 2019.

Declaration of Richard Jare

Debtor filed on March 8, 2019 the Declaration of Richard Jare, Debtor's counsel. Dckt. 48. Mr. Jare provides testimony under penalty of perjury that Exhibit 1 is an authentic screen shot accessed in the ordinary course of business.

The Declaration states further:

I believe that I am permitted, notwithstanding status as counsel in this case, to authenticate the Exhibits since the facts they purport to establish are not expected to be in material dispute.

No authority case law, statutory, or rule authority is provided for the proposition that counsel is entitled to authenticate exhibits where the facts they establish are not in dispute.

Furthermore, no hearsay exception was established. While there is a passing reference to the screen shot being "are ordinary course of business records," no testimony has been provided attesting to the use of the screen shots in the ordinary course of business, as opposed to Debtor's counsel accessing the record specially here where Debtor is delinquent and there is an objection to confirmation of plan or motion to dismiss.

Exhibit 2

On March 6, 2019, Debtor's counsel filed a document titled "Debtor's Second Exhibit in Opposition to Objection to Confirmation." Dckts. 45, 46.

The Exhibit on page 2 of the PDF includes a document titled "§ 1031 Exchange Summary," and has a header from the company Asset Preservation, Inc. *Id.* at p. 2. The Exchange Summary appears to indicate the Cougar Circle Property was exchanged on June 7, 2017 for a 0.4695 percent interest in CF Lease Portfolio I DST, and CF Net Lease Portfolio V.

Beginning on PDF page 3 is a document titled "Assignment of Replacement Property Purchase Agreement." *Id.* at p. 3. The Agreement was executed on July 11, 2017 and indicates Debtor entered into a transaction with Asset Preservation, Inc. for an exchange of Debtor's property for replacement property. The Debtor's assigned property is not defined or identified in that document.

Declaration of Debtor

On March 8, 2019, Debtor filed a Declaration of Debtor (the same document appears to have been filed twice). Dckt. 50. The Declaration of Debtor states under penalty of perjury:

Documents filed as items 46 and 47 are correctly dated authentic Documents generated the ordinary course of my business affairs.

Service

A Proof of Service was filed March 8, 2019. The Proof testifies that the Exhibits and Declaration were served on the Chapter 7 Trustee and the Chapter 13 Trustee, David Cusick (“Trustee”) on March 8, 2019. Dckt. 51.

DEBTOR’S FIRST SET OF POINTS & AUTHORITIES IN OPPOSITION TO OBJECTION TO CONFIRMATION

Debtor filed a document titled “First Set of Points & Authorities in Opposition To Confirmation” (the “Memo”) on March 13, 2019. Dckt. 53. The Memo begins citing certain sections of 11 U.S.C. § 541 defining property of the estate in a bankruptcy case, and the cites to Delaware Statutory Trust law as to “insulation of trust assets from attachment.”

Debtor also provides a website address/link ^{FN.1.} to an article in support of its argument that Debtor’s Delaware Statutory Trust is protected from all judgment creditors of such beneficial owner so long as the trust assets are held in Delaware by a bank or trust company.

FN.1. The link provided is: <https://www.morrisjames.com/newsroom-articles-292.html>.

No Proof of Service was filed introducing evidence that the Memo was served on any party in interest.

DISCUSSION

The Trustee has a swarm of grounds for objection, which distilled all cast doubt as to the proposed plan’s feasibility. These grounds include the Debtor (1) being delinquent in plan payments, (2) the plan terms depending on contingencies, failing to meet the requirements for confirmation, and (3) purporting to do what is not permitted by applicable law.

In opposition of the Objection Debtor only filed a Exhibits, Declarations, and the Memo (however a hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) does not require a opposition to be filed).

The Declaration of Richard Jare seeks to authenticate Exhibit 1 to establish that Debtor is current. However, as discussed *supra*, Debtor has not shown that Exhibit 1 is properly authenticated and not hearsay.

The Declaration of Debtor seeks to authenticate Exhibit 2 which appears to be documents in support of the Cougar Circle Property being exchanged for replacement property and not sold. Dckts., 45-46, 49-50. The testimony provided states:

Documents filed as items 46 and 47 are correctly dated authentic Documents generated the ordinary course of my business affairs.

Declaration, Dckts. 49, 50.

While concluding that the exhibits are what they are, the testimony does not actually provide evidence that the witness (Debtor) has knowledge of Exhibit 2. *See* FED. R. EVID. 901(b)(1). The documents are not identified, or explained, and it is not known what if anything Debtor knows about the documents—other than Debtor stating the Exhibits are documents generated in the ordinary course of her business affairs.

Even assuming the Exhibits are authenticated, it is difficult to ascertain what Debtor's argument here is. The Memo dumps on to the court various code sections and a reference to an article in support of the argument Debtor's Delaware Statutory Trust is protected from all judgment creditors of such beneficial owner so long as the trust assets are held in Delaware by a bank or trust company.

It appears Debtor's counsel has confused the grounds raised by the Chapter 7 Trustee in his Objection. *See* Dckt. 31. The Trustee's present Objection (Dckt. 35) does not raise as grounds for objection the Debtor's transfer of real property other than to note Debtor may have capital gains tax liability.

Notwithstanding Debtor's arguments being applicable to another contested matter, the court has noted Debtor has effectively revealed a scheme whereby Debtor exchanged assets of the Estate in an intentional effort to insulate them to attachment and render them unreachable in the Bankruptcy Case.

Apart from possibly conceding bad faith, Debtor provides no actual legal authority for his (here inapplicable) arguments. Two code sections are referenced, and then the court is directed to an article. No persuasive or binding case law is provided supporting that the Delaware Statutory Trust law preventing attachment would apply here to keep the Debtor's interest in the trust from the Chapter 13 case.

Federal Rule of Bankruptcy Procedure 9011 requires claims, defenses, and other legal contentions to be warranted by existing law or by a nonfrivolous argument. From the pleadings filed in opposition of the Objection, Debtor's counsel has not met this requirement.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

Ruling

Trustee's objections are well-taken. The plan relies on several unknown contingencies, discussed by the court, *supra*, which demonstrate the plan is not feasible. That is reason to deny confirmation. U.S.C. § 1325(a)(6).

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 Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. [16-20540-E-13](#) **KEN SUBIA**
[PSB-2](#) **Paul Bains**

**MOTION TO EMPLOY RE/MAX GOLD
AS BROKER(S)
3-11-19 [37]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----

The Motion to Employ is granted.

Ken Subia, Jr. (“Debtor”) seeks to employ Re/Max Gold (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist marketing and sale of Debtor’s real property commonly known as 1671 Monte Vista Ave., Vacaville, California (the “Property”).

Jared Labarga, a licensed real estate person at Broker testifies that he has discussed the sale of Debtor’s Property and has significant experience marketing property in the area. Labarga testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

The Motion requests retroactive employment of the Broker as of the date Debtor’s Motion To Sell was granted, March 5, 2019.

DISCUSSION

Motion To Employ

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 Broker, considering the declaration demonstrating that Broker 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 Re/Max Gold as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 40. Approval of the commission 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.

Motion For Approval of Compensation

Underlying the Motion To Employ is also a request for approval of professional fees pursuant to 11 U.S.C. § . The Motion states with particularity (FED. R. BANKR. P. 9013) the following:

Broker has submitted to Debtor all purchase offers and as stated above, Debtor has accepted an offer (please refer to PSB-001). In consideration for these services, **the Broker will receive, upon consummation of any sale and approval of this motion, a real estate broker's commission equal to 6% of the purchase price.**

Motion ¶ 7, Dckt. 37(emphasis added). In the prayer for relief, Debtor states the following applicable requests:

That a commission of 6% be approved for Broker from the sale of the Property;

That the Trustee be directed to release the \$31,080.00 to Broker from the sale approved by this Court on 03/05/2019 (PSB-001) .

Id., at p. 5:5.5-9.5.

Multiple Requested Relief

Debtor has not provided the court what authority exists allowing two motions to be combined. Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b).

In some instances, a party may request joinder where two Motions are better suited to be brought as one—one such situation being a retroactive motion to employ and motion for approval of compensation. The court infers such a request from the present Motion.

Failure To State Grounds with Particularity

As the court laid out above, the grounds stated with particularity as to the request for approval of fees are sparse. Generally, the court declines to perform the associate level work of assembling the legal arguments and stating the grounds. However, the court is able to piece together from the facts pleaded enough to support the Motion.

Approval of Compensation

The court finds that the commission of \$31,080.00 (6 percent of the sale) is reasonable and that Broker effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$31,080.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 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 to Employ filed by Ken Subia, Jr. (“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 Debtor is authorized to employ Re/Max Gold as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 40.

IT IS ORDERED that Re/Max Gold is allowed the following fees and expenses as a professional of the Estate:

Re/Max Gold, Professional employed by Debtor

years, 3 percent in year 6, 4 percent in year 7, and 4.8755 percent until the maturity date of July 1, 2036.

The Motion is supported by the Declaration of Catherine A. Porter. Declaration, Dckt. 49. 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.

First Plan

While the Amended Plan provides for Creditor as a Class 4, that plan seems to reflect the modified loan terms. The first plan filed provided for Creditor as a Class 1, with \$53,000.00 in arrears to be paid through the plan and a post-petition payment of \$1,273.10. Plan, Dckt. 20.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("the Chapter 13 Trustee"), filed a Response on March 11, 2019, Dckt. 75. The Chapter 13 Trustee does not oppose the Debtor's motion, and argues the monthly mortgage payment is lowered from \$1,189.25 per proof of claim to \$980.22 per the loan modification.

CREDITOR'S RESPONSE

Creditor filed a Response on March 12, 2019, Dckt. 78. Creditor notes that the Motion states the modification excludes from the new principal balance unpaid late charges, while the Agreement actually includes into the modified principal balance the unpaid late charges.

Creditor requests the Motion be corrected or the denied. Creditor also requests attorney's fees without stating grounds therefor.

DEBTOR'S REPLY

Debtor filed a Reply on March 19, 2019. Dckt. 84. Debtor agrees with Creditor and requests the order include language addressing issues raised by Creditor.

DISCUSSION

Authentication of Loan Modification Agreement

While Debtor filed her Declaration in support of the Motion on February 12, 2019, Debtor does not provide testimony to authenticate the Modification Agreement filed as Exhibit A. Declaration, Dckt. 49.

Where personal knowledge is not relied on to authenticate a document, the court may consider alternative means of authentication. *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533 (9th Cir. 2011). Examining the appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances, is one method of identifying or

authenticating an item of evidence. FED. R. EVID. 901(b)(4).

Here, Exhibit A consists of correspondence between Debtor and Creditor, and a document titled “LOAN ADJUSTMENT AGREEMENT.” Exhibit A, Dckt. 50(emphasis in original). The parties and the terms of the agreement are the same as identified in the Motion, and no party in interest has contested the Exhibit.

Based on the document’s distinctive characteristics, including the terms and parties identified therein, the court finds this is a true and correct copy of the Modification Agreement.

Approval of Loan Modification

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), including by misstating that loan late charges are not incorporated into the new principal balance where the Modification Agreement does provide for those fees to be incorporated, the court will waive the defect because the Declaration filed in this matter provides much of the information. The moving party (also notably failing to authenticate the Modification Agreement) is well-served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor’s ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest (other than Creditor’s objection to the inaccurate summary of terms provided in Debtor’s Motion), 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 Loan Modification filed by Catherine A. Porter (“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 court authorizes Debtor to amend the terms of the loan with Bank of New York Mellon, serviced by Bayview Loan Servicing (“Creditor”), which is secured by the real property commonly known as 4265 Taylor Street, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 50).

5. [19-20477-E-13](#) DANIEL ARANA
[DPC-1](#) Mark Shmorgan

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-4-19 [20]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 4, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Daniel Arana ("Debtor") is \$2,679.00 delinquent in plan payments.

DISCUSSION

Trustee's objections are well-taken.

Debtor is \$2,679.00 delinquent in plan payments, which represents one month of the \$2,679.00 plan payment. Before the hearing, another plan payment will be due. Debtor has paid \$0.00

into the plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

6. [18-26203-E-13](#)
[PGM-3](#)

CATHERINE PORTER
Peter Macaluso

MOTION TO CONFIRM PLAN
2-11-19 [52]

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Plan is denied.

Catherine A. Porter ("Debtor") seeks confirmation of the Amended Plan, which would constitute Debtor first confirmed plan in this case. Dckt. 55. The plan provides for \$400.00 to be paid through January 2019, and then payments of \$565.00 for 57 months. Plan, Dckt. 56. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 27, 2019. Dckt. 70. Trustee opposes confirmation on the grounds Debtor's plan relies on their Motion to Approve Loan Modification (Dckt. 47), Debtor is \$565.00 delinquent in plan payments.

DEBTOR'S REPLY

Debtor filed a Reply on March 19, 2019. Dckt. 86. Debtor states the Motion to Approve Loan Modification is set for hearing March 26, 2019, and that Debtor intends to be current before the date of the hearing.

DISCUSSION

A review of the docket shows the Debtor's Motion to Approve Loan Modification (Dckt. 47) was granted.

However, Debtor is \$565.00 delinquent in plan payments which represents one month of the \$565.00 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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 Catherine Ann Porter ("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 Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7. [19-20429-E-13](#) TANYA HALL
[DPC-1](#) Timothy Walsh

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-4-19 [18]**

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on March 4, 2019. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The debtor Tanya Dorene Hall (“Debtor”) missclassified the 2016 Dodge Dart in Class 2(A), where it should be listed in Class 2(B) since it was a debt incurred on May 2016 (in less than 910 days before filing the bankruptcy case).
- B. Debtor has not filed a declaration of her “significant other” stating their ability and willingness to contribute \$1,400.00 per month for the duration of the Plan. The plan lists and relies on such a donation.
- C. Debtor’s proposed plan does not account for the claim of Real Time Resolutions (“Creditor”). Creditor filed a Proof of Claim, No. 3, on February 27, 2019 asserting

arrears of \$62,437.70. Accounting for that secured claim, the plan currently would take 116 months to complete.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 20, 2019. Dckt. 24. Debtor opposes the Objection on the following grounds:

1. Debtor is in the process of getting the significant other to sign a declaration
2. Debtor intends to file an Objection to claim of Creditor based on the "predatory lending" of Bank of America.

Debtor requests time to consider her rights and course of action before sustaining the Objection.

DISCUSSION

Trustee's objections are well-taken.

Debtor has not actually opposed any of the grounds raised by Trustee. Rather, Debtor promises to eventually get a declaration of the significant other (who is alleged to be gifting \$1,400.00 per month or \$84,000.00 over the life of the plan), and to possibly file an Objection To Claim.

Unfortunately, a promise to address the Trustee's grounds for objection does not resolve the Objection.

Based on the Trustee's grounds, discussed *supra*, the plan is not feasible. That is cause to sustain the Objection. 11 U.S.C. § 1325(a)(6).

Debtor can get her ducks in a row and then file an Amended Plan which meets the requirements of the Bankruptcy Code.

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 Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of

- A. Debtor's plan fails to provide for the prepetition arrears or full amount of Creditor's secured claim.
- B. Debtor's plan does not provide adequate protection payments.
- C. Debtor's plan, failing to provide for Creditor's claim, is causing prejudicial delay.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 21, 2019. Dckt. 25. Debtor opposes the Objection on basis Debtor intends to file an Objection to claim of Creditor based on the "predatory lending" of Bank of America. Opposition, Dckt. 25 at 3:1-3.

Debtor requests time to consider her rights and course of action before sustaining the Objection.

DISCUSSION

Creditor's objections are well-taken.

Debtor has not actually opposed any of the grounds raised by Creditor. Rather, Debtor promises to possibly file an Objection To Claim after a period of contemplation.

Unfortunately, a promise to possibly file an Objection To Claim after a period of contemplation does not resolve the Objection.

Because the plan fails to provide for the secured claim of Creditor and does not provide adequate protection payments, the plan is not feasible. That is cause to sustain the Objection. 11 U.S.C. § 1325(a)(6).

Debtor can get her ducks in a row and then file an Amended Plan which meets the requirements of the Bankruptcy Code.

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 Real Time Resolutions, as

agent for Bank of America, N.A. (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 26, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Orlando Cisneros (“Debtor”) is delinquent \$7,000.00 in Plan Payments.
- B. Debtor’s plan is not feasible because:
 - i. Debtor’s plan does not list or provide for the secured claims of Cach, LLC; Discover Bank; or the Employment Development Department.
 - ii. Debtor has not filed documentary evidence for his estimated future gross rental income of \$2,688.00

monthly where Debtor in the past year averaged \$1,122.00 monthly.

- iii. Debtor's plan relies on \$4,335.00 in family support monthly. No financial information of the family member has been provided, or a declaration of the family member(s) making the contribution.
- iv. Debtor's Chapter 7 case, No. 18-22528, has not been closed because the Debtor has a BMW in that case with significant non-exempt equity. The Chapter 7 Trustee in that case filed a Notice of Intent to Sell Equity in Assets which seeks to allow Debtor to buy back the non-exempt equity for \$8,000.00 (paid in 4 installments). Trustee believes based on this Debtor may have more non-disclosed assets.

- C. Debtor has failed to provide business documents, including 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists.

DISCUSSION

Trustee's objections are well-taken.

The brunt of objections raised by Trustee cast doubt as to the plan's feasibility, including the plan not providing for secured claims, not substantiating substantial family gifts, not substantiating rental income estimates, and not providing for the proposed buy-back of Debtor's non-exempt equity in his open Chapter 7 case. Trustee has provided evidence supporting these grounds. Based on those grounds, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor is \$7,000.00 delinquent in plan payments, which represents one month of the \$7,000.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency is more grounds showing that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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 Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

expense will reduce net income by approximately \$260.00 per month. Where Debtor's net income was listed at \$2,426.40, Debtor would not longer be able to make the \$2,425.00 plan payment.

- C. Debtor failed to provide the Class 1 Checklist and Authorization Release Information Forms.
- D. Debtor admitted at the Meeting of Creditors that the petition does not correctly state Debtor's full name.

FEBRUARY 12, 2019 HEARING

At the February 12, 2019 hearing the court continued the hearing to March 26, 2019. Civil Minutes, Dckt. 19.

The court issued an Order that also required an Opposition to be filed by March 1, 2019, and a Reply (if any) to be filed by March 8, 2019. Order, Dckt. 20.

TRUSTEE'S RESPONSE

Trustee filed a Response on March 6, 2019. Dckt. 23. Trustee states the plan still fails the liquidation test, though the other 4 grounds for Objection have been resolved.

Debtor is current under the proposed plan, has provided the Class 1 Checklist, and filed Amended Schedules I and J showing ability to pay.

However, Debtor has continued to fail to disclose a middle name.

DISCUSSION

Trustee's Objections are well-taken. Debtor did not file an Opposition as ordered by the court. *See* Order, Dckt. 20.

Debtor only proposes a 34 percent dividend to unsecured claims, amounting to \$28,541.00. However, Debtor's nonexempt assets total \$62,052.00. Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

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.

basis that the plan term exceeds 60 months.

According to Trustee, the proposed plan will complete in 74 months due to Robin Jill Jorgensen's ("Debtor") proposing to pay 100 percent to general unsecured claims, totaling \$88,889.00. Declaration, Dckt. 17; Schedule E/F, Dckt. 1. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan may not comply with 11 U.S.C. §§ 1322 and 1325(a). However, this depends on the claims filed.

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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [17-25136-E-13](#)
[SJT-3](#)

**JOHN MCFARLIN AND
SAMANTHA ROBBINS**
Susan Turner

MOTION TO MODIFY PLAN
2-7-19 [46]

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2019. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Modified Plan is denied.

John McFarlin and Samantha Robbins (“Debtor”) seek confirmation of the Modified Plan because Samantha Robbins to reflect changes to income and expenses. Declaration ¶ 3, Dckt. 49. The Modified Plan provides \$28,381.00 paid into the plan up to January 25, 2019, and payments of \$2,080.00 for the remainder of the plan. Modified Plan, Dckt. 48. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on March 11, 2019. Dckt. 55. Trustee argues Debtor’s proposed Modified Plan is not his best efforts because Debtor’s transport expense was increased by \$480.00 (to \$770.00 total).

TRUSTEE’S SUPPLEMENTAL OPPOSITION

Trustee filed a Supplemental Opposition on March 12, 2019. Dckt. 58. Trustee states Debtor provided supplemental information showing the Vehicle expenses were \$395 monthly, leaving an excess of \$308.00.

DEBTORS REPLIES

Debtor filed two identical Replies on March 19, 2019. Dckts. 60, 61. Debtor requests additional time to provide Trustee supplemental information supporting the expenses.

DISCUSSION

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor has not demonstrated the \$770.00 in transportation expenses to be necessary expenses, and is not providing all disposable income into the Modified Plan. Trustee has provided opinion testimony that Debtor's expenses should be only \$395.00 monthly.

At the hearing, xxxxxxxxxxxxxxxx.

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 Modified Chapter 13 Plan filed by John McFarlin and Samantha Robbins("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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

The Objection to Proof of Claim Number 12 of AT&T Corp is sustained, and the claim is disallowed in its entirety.

Chanda Yvette Ramsey-Wallace, Chapter 13 Debtor (“Objector”), requests that the court disallow the claim of creditor, AT&T Corp. (“Creditor”), Proof of Claim No. 12 (“Claim”), Official Registry of Claims in this case. Objection, Dckt. 25. The Objection to Claim as filed on January 23, 2019.

Debtor provided evidence for the Objection that the debt alleged in the Proof of Claim belonged to her *ex husband* after they had separated. Declaration ¶ 5, Dckt. 27.

On February 1, 2019, Creditor submitted a Notice of Withdrawal of Claim. Dckt. 33.

DISCUSSION

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

Proof of Claim Disallowed

Under Federal Rule of Bankruptcy Procedure Rule 3006, once an objection to a creditor’s proof of claim has been filed the creditor may not withdraw the claim except on order of the court. Fed. R. Bankr. P. 3006.

However, the court interprets the withdrawal as a non-opposition to the present Objection. Based on the evidence presented, the Objection to the Proof of Claim is sustained, and the claim of Creditor is disallowed in its entirety.

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Debtor requests that it be allowed \$550.00 in attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees. No evidence is provided of Debtor having incurred any attorneys’ fees or Creditor having any obligation to pay attorneys’ fees.

If statutory or contractual grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). The amount of such fees having been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could

have taken the non-opposition and non-response as defaults.

Here, it is a possible there are some grounds for attorney's fees, which were incurred by Debtor in the course of having to correct the asserted Proof of Claim. The court's decision not to award fees here does not prevent award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054, 9014), presuming such a motion states the grounds for relief. The court will take into account what are the reasonable fees for this Objection when considering such a request if made by a separate motion.

The request for attorney's fees is not 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 Objection to Claim of AT&T Corp. ("Creditor"), filed in this case by Chanda Ramsey-Wallace, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12 of AT&T Corp. is sustained, and the claim is disallowed in its entirety.

IT IS FURTHER ORDERED that the request for attorney's fees is denied without prejudice to Debtor seeking fees as a post-judgement motion.

Chanda Ramsey-Wallace, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Americredit Financial Services (“Creditor”), Proof of Claim No. 14 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$8,994.95.

Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is August 21, 2018. Notice of Chapter 13 Bankruptcy Case, Dckt. 9.

DISCUSSION

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

Proof of Claim Disallowed

Under Federal Rule of Bankruptcy Procedure Rule 3006, once an objection to a creditor’s proof of claim has been filed the creditor may not withdraw the claim except on order of the court. Fed. R. Bankr. P. 3006.

However, the court interprets the withdrawal as a non-opposition to the present Objection. Based on the evidence presented, the Objection to the Proof of Claim is sustained, and the claim of Creditor is disallowed in its entirety.

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Debtor requests that it be allowed \$550.00 in attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees. No evidence is provided of Debtor having incurred any attorneys’ fees or having any obligation to pay attorneys’ fees. Based on the pleadings, the court would either: (1) have to award attorneys’ fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Debtor grounds for attorneys’ fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If statutory or contractual grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). The amount of such fees having been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

Here, it is a possible there are some grounds for attorney’s fees, which were incurred by

Debtor in the course of having to correct the asserted Proof of Claim. The court's decision not to award fees here does not prevent award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054, 9014), presuming such a motion states the grounds for relief. The court will take into account what are the reasonable fees for this Objection when considering such a request if made by a separate motion.

The request for attorney's fees is not 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 Objection to Claim of Americredit Financial Services ("Creditor") filed in this case by Chanda Ramsey-Wallace, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14 of Americredit Financial Services is sustained, and the claim is disallowed in its entirety.

IT IS FURTHER ORDERED that the request for attorney's fees is denied without prejudice to Debtor seeking fees as a post-judgement motion.

15. [19-20371-E-13](#) **CHARLES RATLIFF** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Mark Wolff** **PLAN BY DAVID P. CUSICK**
2-26-19 [14]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 26, 2019. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----
-----.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on March 19, 2019. Dckts. 26, 30. Filing a new plan is a de facto withdrawal of the pending plan. 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 Chapter 13 Trustee,

Meeting of Creditors held on February 28, 2019. The Meeting was continued to March 28, 2019.

- B. Debtor is \$100.00 delinquent in plan payments.
- C. Debtor has not correctly filed their Chapter 13 plan, using an out-of-date version of the form Plan EDC-3-080 (effective 5/1/12) as opposed to EDC 003-080(effective 11/9/2018).
- D. Debtor claims the incorrect exemptions as to Debtor's property known as 5746 Cada Circle, Carmichael, California (the "Property"), and Debtor's bank account. Therefore, Debtor has non-exempt equity of \$250,050.00 and is not providing that much to unsecured claims.
- E. Debtor fails to provide for the secured claim of NRZ-Pass Through Trust X, secured by a deed of trust on the Property in the amount of \$442,610.30.
- F. Debtor indicates on Schedule I being unemployed with \$850.00 in income from her pension, \$1,650.00 from "self-employment." Debtor has not provided evidentiary support to substantiate this income estimation.

DISCUSSION

Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's plan has also been demonstrated to be not feasible because it fails to provide for the secure claim of NRZ-Pass Through Trust X, secured by a deed of trust on the Property, and because Debtor has not substantiated asserted income from "self-employment."

Debtor used for her Chapter 13 Plan form Plan EDC-3-080 (effective 5/1/12) as opposed to EDC 003-080(effective 11/9/2018). The Plan used is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Trustee argues Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4) because Debtor is not entitled to several claimed exemptions, and therefore has

\$250,050.00 in nonexempt equity. A review of the docket shows Trustee's Objection to claim of exemption is set for hearing April 16, 2019. Dckt. 36. Before that Objection is sustained, the court cannot determine whether Debtor's plan fails the liquidation analysis.

However, based on the other grounds raised by the Trustee, there is cause to deny confirmation before that hearing.

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 Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

having been dismissed.

DISCUSSION

Creditor's objections are well-taken.

Creditor asserts a claim of \$442,610.30 in this case. Debtor's Schedule D fails to state Creditor's secured claim. In the proposed plan, Debtor lists Creditor as an unsecured creditor in Class 6, with a claim amount of only \$600. Dckt. 13.

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

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

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

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

Those three possibilities are relevant only if the plan provides for the secured claim, though.

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for

a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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 NRZ Pass-Through Trust X ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. [17-23174-E-13](#) **NICOLE PRESTON** **MOTION TO MODIFY PLAN**
[MWB-3](#) **Mark Briden** **2-4-19 [67]**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 4, 2019. Amended Proof of Service, Dckt. 78. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Modified Plan is denied.

Nicole Preston (“Debtor”) seeks confirmation of the Modified Plan because Debtor is going back to school to complete her Bachelors Degree, and her grandson is going to begin helping her make plan payments. Dckt. 69 (Declaration). The Modified Plan increases Debtor’s plan payment from \$880.00 to \$1,000 starting from February 25, 2019 until the end of the plan. Dckt. 70 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on March 11, 2019. Dckt. 75.

Trustee opposes confirmation of the modified plan on the basis that:

- A. Debtor did not indicate on the Proof of Service service to any creditors.
- B. Debtor's Modified Plan includes two "Section 6.01" providing payments of differing amounts (\$880.00 and \$1,000.00). Trustee is uncertain which payment is correct.
- C. Debtor is \$1,000.00 delinquent in plan payments

DEBTOR'S REPLY

Debtor filed a Response on March 18, 2019. Dckt. 79. In the Response, Debtor states service was provided to creditors, and an Amended Proof of Service was filed to reflect that.

Debtor's further states that the correct proposed plan payment is \$1,000.00, and that Debtor will be current on the plan prior to the March 26, 2019 hearing date.

DISCUSSION

Failure to State Grounds with Particularity

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The grounds stated in the Motion (summarized by the court for brevity) are:

- 1. Debtor filed the petition on May 10, 2017.
- 2. Debtor appeared at the Meeting of Creditors.
- 3. Trustee filed a Motion To Dismiss the case.
- 4. Debtor filed a Modified Plan.
- 5. This Motion seeks confirmation of the Modified Plan.
- 6. The Motion and supporting documents have been served on creditors.

Motion, Dckt. 67.

Debtor does not state grounds as to the Modified Plan meeting the requirements of 11 U.S.C. § 1329, or any other provision of the Bankruptcy Code.

In reviewing the Declaration of Debtor, it is clear that Debtor intended the Declaration to be

the “real” motion, providing all the necessary facts and arguments for confirmation.

Because the necessary facts have been demonstrated (though not pleaded in the Motion), the court will overlook this shortcoming. However, counsel is reminded that failure to comply with the Federal Rules of Bankruptcy Procedure and Local Rules is grounds for an appropriate sanction.

Modified Plan

Debtor has clarified the plan payment is \$1,000.00 and not \$880.00 (something which can be stated affirmatively in the language of the Order confirming the plan). Additionally, an Amended Proof of Service indicates timely service on creditors. Dckt. 78.

However, Debtor is \$1,000.00 delinquent in plan payments, which represents one month of the \$1,000.00 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 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 Modified Chapter 13 Plan filed by Nicole Preston (“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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

19. [19-20067-E-13](#)
[DPC-1](#)

TYRONE WEST
Richard Jare

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-25-19 [28]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----

-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor's plan does not provide for payment of the claim of Franchise Tax Board in the amount of \$316,001.91
- B. Debtor has not filed returns during the 4-year period preceding the filing of the petition, including for years 2015-2018.
- C. Debtor's plan provides for payments of \$250 for 2 months, \$350 for 10 months, \$1,200 for 12 months, and \$2,000 for 36 months. On Schedule I, Debtor lists \$1,200.88 in income from "odd jobs, side work." Debtor

lists on Schedule J expenses of only \$950.88. Debtor has not shown an ability to make stepped up payments.

- D. Debtor lists on Schedules I and J a pit bull attack, but does not list any claim. Debtor admitted at the Meeting of Creditors he was attack by a dog in 2016, but explained the claim was not listed because the dog's owner has moved.
- E. Trustee attached the wrong plan to the notice, so the creditors were not noticed of the plan.

DISCUSSION

Trustee's objections are well-taken.

Trustee argues that the plan is not feasible based on Debtor not providing for the claim of the FTB and not demonstrating an ability to make the stepped up plan payments. The court agrees, and finds the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Trustee notes Debtor has a potential personal injury claim from a dog bite. While not grounds are stated by Trustee (FED. R. BANKR. P. 9013), the court notes that a claim could cause Debtor's proposed to fail the liquidation test pursuant to 11 U.S.C. § 1325(a)(4). As sternly stated by the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010), a federal trial court does not grant relief merely because someone asks for it, but it must be relief shown to be allowable under the law and supported by sufficient evidence.

Proof of Claim, No. 2 filed by the FTB states that Debtor has not filed returns for the 2015-2018 tax years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee also notes the proposed plan was not served on Creditors.

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 Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

20. [18-24449-E-13](#) **STEVEN SMITH** **CONTINUED MOTION TO CONFIRM**
[AF-4](#) **Arasto Farsad** **PLAN**
12-21-18 [55]

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2018. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is denied.

Steven Claude Smith (“Debtor”) seeks confirmation of the Amended Plan, Which would constitute Debtor’s first confirmed plan in this case. The Amended Plan provides for payments of \$500 for 4 months, \$1,000 for 20 months, \$1,925 for 12 months, and \$2,000 for 24 months. Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 29, 2019. Dckt. 67. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent \$1,479.00 in plan payments.
2. Debtor’s plan proposes increased plan payments by \$925 beginning in month 25 and another \$1,000 in month 37. However, Schedule I does not indicate Debtor has the ability to make these stepped up payments.
3. The claim of creditor Carrington Mortgage Services matures in 2021 and should be provided as a Class 2, not a Class 1.
4. The plan proposes to set the Trustee fee in violation of 28 U.S.C. § 586.

FEBRUARY 12, 2019 HEARING

At the February 12, 2019 hearing, the court continued the matter to the March 26, 2019 hearing date to allow Debtor to file supplemental pleadings to address the Trustee’s grounds for opposition. Civil Minutes, Dckt. 71.

MODIFIED/CORRECTED THIRD AMENDED PLAN & SUPPLEMENTAL DECLARATION

On February 28, 2019, Debtor filed a “Modified/Corrected Third Amended Plan.” Dckt. 74. The Modified/Corrected Plan (1) changes creditor Carrington Mortgage from a Class 1 to a Class 2A, (2) removes the specified Trustee’s fees from Section 7.01, (3) and increases the dividend from 0 to 100 percent of unsecured claims, which total \$5,895.00.

Debtor filed a Supplemental Declaration in support of the Motion on January 31, 2019. Dckt. 70. Responding to Trustee’s concern that Debtor will not have sufficient income to support the stepped up payments, Debtor states that he will be converting his garage to be a rent-compliant dwelling and expects to generate \$800-\$1,000 in rent income. *Id.* at ¶¶ 4-5. The conversion is estimated to take 6-9 months, and will go through a remodeling and permitting process. *Id.* Debtor states if there is an income shortfall beginning month 36 of the plan, Debtor will create a set up for a mobile home on Debtor’s property for additional rental income. *Id.* at ¶ 6.

Debtor states that the remodel expense would “normally” cost around \$14,000 to \$17,000, and that it will take six to nine months to complete. Debtor does not provide testimony as to what remodeling is required or the permissibility of converting a garage into a rental dwelling. Debtor testifies that he is a licensed contractor and his son is a journeyman contractor. Declaration ¶ 3,4; Dckt. 75.

Debtor testifies that he will fund the remodel by: (1) reducing his household living expenses, (2) having his son provide materials and labor, and (3) being the contractor on the project. With respect to reducing living expenses, no explanation is provided as to what will be reduced. Looking at Amended Schedule J there do not appear to be any obvious expenses for this family of two persons which can be reduced. Dckt. 60 at 6-7.

Debtor does testify that being in Chico, California, rental housing is at a premium given the devastation caused by the wildfires in the Summer of 2018.

Debtor also states his wife is not currently working, but anticipates resuming work before the end of 2019. *Id.* However, on Amended Schedule I Debtor states that his wife is Retired/Disabled, so it appears questionable whether such a disabled person could work. Dckt. 60 at 4-5.

TRUSTEE'S RESPONSE

Trustee filed a Supplemental Response on March 4, 2019. Dckt. 78. Trustee asserts the Modified/Corrected plan fixes the misclassification of creditor Carrington Mortgage, eliminates the fixed Trustee's fees, and explains proposed rental income is the source of funds for the stepped up plan payments.

However, Trustee argues Debtor is still delinquent \$479.00 under the plan.

DISCUSSION

Although the other objections to confirmation have been raised, Debtor is still \$479.00 delinquent in plan payments, which represents multiple months plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In addition to Debtor's delinquency in payments, the court has some concern over Debtor's planned remodel. Taking Debtor's conservative estimates (which he makes as a former contractor), the project will take 9 months to complete at a cost of \$17,000.00. Debtor's net income on Amended Schedules I and J is listed to be \$1,003.00, and the proposed monthly plan payment is currently \$1,000.00. It is unclear where the additional income for the remodeling cost will come from.

Debtor states under penalty of perjury his son will provide materials to reduce the estimated cost by half. However, no declaration of the son who is purporting to provide \$8,500.00 in materials as a gift is provided.

Even assuming Debtor's son comes through, that leaves \$8,500.00 to be paid for by Debtor in the period of a few months. While Debtor states he will decrease expenses to meet this cost, no plan for reducing specific expenses is given. If Debtor is able to reduce expenses at will by nearly \$1,000.00 a month (and likely more given the \$8,500.00 cost of materials would not be spread evenly over the 9 month remodel period), possibly the expenses listed as necessary on Schedule J are not accurate.

In the long term, the remodel could make economic sense for the Chapter 13 Plan. However, no economic analysis is provided as to not only the projected remodel costs, but also the costs of being a landlord, including increased property taxes for the remodel, rental taxes, costs and expenses of maintain a residential rental, and cost of insurance for a landlord.

Moreover the remodel presents a significant risk to the plan's feasibility given the front loading of costs Debtor has not demonstrated an ability to pay for.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

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 Amended Chapter 13 Plan filed by Steven Claude Smith ("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 Confirm the Amended Plan is ~~denied, and the proposed Chapter 13 Plan is not confirmed.~~

21.	<u>18-24449-E-13</u> <u>PPR-1</u>	STEVEN SMITH Arasto Farsad	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON 1-21-19 [62]
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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.

The Objection to Confirmation is dismissed without prejudice.
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The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, its assignees and/or successors in interest ("Creditor") holding a secured claim filed an "Objection" on January 21, 2019. Dckt. 62.

Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan proposes to pay Creditor nothing for the first seven months, then \$675.00 per month for twenty-one months, \$1,375.00 per month for twelve months, and \$1,535.00 per month for twelve months. Creditor does not consent to receive payment in unequal amounts.
- B. Debtor's Schedule J indicates that Debtor has \$1,003.00 in disposable income, however the Debtor provides for payments of well over \$1,003.00 to Creditor in the final twenty-four months of the plan. Debtor has not provided any explanation of how he intends to meet his obligations to Creditor under the plan.

Creditor requests in its prayer for relief that the proposed Amended Plan be denied, that Creditor be awarded its attorney's fees, and that this Chapter 13 case be dismissed.

CREDITOR'S WITHDRAWAL

Creditor filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on March 15, 2019, Dckt. 80. The court interprets the withdrawal to have been filed in light of the "Modified/Corrected" Plan filed by Steven Claude Smith ("Debtor") on February 28, 2019. Dckt. 74.

Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Creditor's Objection is dismissed without prejudice.

However, a review of the docket shows the court has denied Debtor's Motion to Confirm (Dckt. 55) set for hearing the same day as this Objection. Therefore, the Third Amended 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 Confirmation filed by The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate holders of CWABS, Inc., Asset Backed Certificates, Series 2006-SPS2, its assignees and/or successors in interest ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection To Confirmation is dismissed without prejudice, and the Third Amended Chapter 13 Plan is not confirmed.

22. [19-20075-E-13](#) BENJAMIN/KRISTIE AVILA
[SLE-3](#) Steele Lanphier

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK, (USA) N.A.
3-8-19 [36]

Appearance of Steele Lanphier, Esq., Counsel for Debtors Required No Telephonic Appearance Permitted for Said Counsel

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

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

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

Sufficient 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 March 8, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capitol One Bank, N.A. (“Creditor”) against property of Benjamin Edward Avila and Kristie Lea Avila (“Debtor”) commonly known as 12212 Conservative Way, Rancho Cordova, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,031.95. Exhibit C, Dckt. 39. An abstract of judgment was recorded with Sacramento County on May 10, 2018, that encumbers the Property. *Id.*

TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 11, 2019.

Dckt. 46. Trustee argues that based on Debtor's values stated in the Motion, that \$4,527.96 in equity exists and the Motion should be denied.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$430,471.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,047.62 , illustrated by the Proof of Claim, No. 8 filed by creditor Wilmington Savings Fund Society, FSB. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,081.00 on Schedule C. Dckt. 1. ^{FN. 1}

FN. 1. California Code of Civil Procedure § 704.730 provides for a homestead exemption of \$75,000. The court is unsure of how the Debtor is claiming an exemption of \$75,081.04.

Schedule A/B Value of the Property.....	\$430,471.00
Schedule D Stated Senior Consensual Liens.....	(\$350,925.96)
Schedule D Stated Judgment Liens.....	(\$ 4,464.00)
 Value in Excess of Liens.....	 \$ 75,081.04

It appears that Debtor and Debtor's counsel have attempted to amend California law to increase the amount of the homestead exemption to the value of the property. If the court were to use these amounts, there would be no impairment of the homestead exemption and none of the liens could be avoided.

Though Proof of Claim No 8-1 filed by the consensual senior lien creditor states that the secured claim is actually \$353,047.62, that actual claim amount is ignored by Debtor and Debtor's counsel. The Motion seeks to have the lien avoided based on the erroneous numbers used in the Debtor's schedules. Because the amount of the secured claim is a fact that is in the court's records, the court uses the correct number to render the correct legal result. Though the court could have ignored the facts and based it on Debtor's erroneous allegations, such "punishment" is not an appropriate result.

The court notes that what appears to be a blatant misstatement of California law is an issue that falls under the certifications made under Federal Rule of Bankruptcy Procedure 9011. Such misstatements may be addressed by a separate order to show cause.

The total of the exemption and consensual liens is \$428,047.62. Therefore, there is \$2,423.38 in non-exempt equity which may not be avoided.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only partial equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$2,423.38 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Benjamin Edward Avila and Kristie Lea Avila (“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 judgment lien of Capitol One Bank, N.A., California Superior Court for Sacramento County Case No. 34-2018-00225261, recorded on May 10, 2018, Document No. 201805101327, with the Sacramento County Recorder, against the real property commonly known as 12212 Conservative Way, Rancho Cordova, California, is avoided in its entirety for all amounts in excess of \$2,423.38 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

23. [19-20075-E-13](#) **BENJAMIN/KRISTIE AVILA** **MOTION TO AVOID LIEN OF CAPITAL**
[SLE-4](#) **Steele Lanphier** **ONE BANK, (USA) N.A.**
3-8-19 [41]

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

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

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

Sufficient 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 March 8, 2019. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----
-----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capitol One Bank, N.A. (“Creditor”) against property of Benjamin Edward Avila and Kristie Lea Avila (“Debtor”) commonly known as 12212 Conservative Way, Rancho Cordova, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,373.83. Exhibit C, Dckt. 44. An abstract of judgment was recorded with Sacramento County on May 10, 2018, that encumbers the Property. *Id.*

TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 11, 2019.

Dckt. 49. Trustee argues that based on Debtor's values stated in the Motion, that \$1,496.05 in equity exists and the Motion should be denied.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$430,471.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,047.62, illustrated by the Proof of Claim, No. 8 filed by creditor Wilmington Savings Fund Society, FSB. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,081.04 on Schedule C. Dckt. 1.^{FN. 1} Additionally, there was a senior judicial lien in the amount of \$3,031.95. Exhibit C, Dckt. 39.

FN. 1. California Code of Civil Procedure § 704.730 provides for a homestead exemption of \$75,000. The court is unsure of how the Debtor is claiming an exemption of \$75,081.04.

Schedule A/B Value of the Property.....	\$430,471.00
Schedule D Stated Senior Consensual Liens.....	(\$350,925.96)
Schedule D Stated Judgment Liens.....	(\$ 4,464.00)
 Value in Excess of Liens.....	 \$ 75,081.04

It appears that Debtor and Debtor's counsel have attempted to amend California law to increase the amount of the homestead exemption to the value of the property. If the court were to use these amounts, there would be no impairment of the homestead exemption and none of the liens could be avoided.

Though Proof of Claim No 8-1 filed by the consensual senior lien creditor states that the secured claim is actually \$353,047.62, that actual claim amount is ignored by Debtor and Debtor's counsel. The Motion seeks to have the lien avoided based on the erroneous numbers used in the Debtor's schedules. Because the amount of the secured claim is a fact that is in the court's records, the court uses the correct number to render the correct legal result. Though the court could have ignored the facts and based it on Debtor's erroneous allegations, such "punishment" is not an appropriate result.

The court notes that what appears to be a blatant misstatement of California law is an issue that falls under the certifications made under Federal Rule of Bankruptcy Procedure 9011. Such misstatements may be addressed by a separate order to show cause.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Benjamin Edward Avila and Kristie Lea Avila (“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 judgment lien of Capitol One Bank, N.A., California Superior Court for Sacramento County Case No. 34-2018-00225304, recorded on May 10, 2018, Document No. 201805101332, with the Sacramento County Recorder, against the real property commonly known as 12212 Conservative Way, Rancho Cordova, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Debtor lists gross income of \$11,535.00 on Schedule I, but claims on Schedule C exempt earnings in the amount of \$16,658.86. Dckt. 21; *See also* Declaration, Dckt. 34.

The claimed exemption provides for the exemption of only 75 percent of the paid earnings. *Cal. Civ. Code*. § 704.070(b)(2). Therefore, Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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 Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions for Debtor'S account balances and tax refunds under California Code of Civil Procedure § 704.070 are disallowed in their entirety.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Plan is denied.

Benjamin Edward Avila and Kristie Lea Avila (“Debtor”) seek confirmation of the Plan , which is their first proposed plan in this case. The Plan provides for payments of \$3,758.50 and a 10 percent dividend to unsecured claims. Plan, Dckt. 26.

TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on February 26, 2019. Dckt. 29. Trustee opposes confirmation on the following grounds:

1. Debtor’s proposed plan relies on 2 motions to avoid lien of Capital One.
2. Debtor’s plan relies on claimed exemptions to which Trustee has filed an Objection. Debtor’s non-exempt equity (if the Objection is successful) is

\$5,631.85.

3. Based on Debtor's prior tax returns, Debtor will likely see a tax refund. However, no refund is provided through the plan.
4. Debtor proposes to pay Attorney's fees before Class 1, Class 2, or unsecured claims. Debtor proposes only \$250.00 monthly for the \$2,000.00 in fees, but could proposed higher monthly dividend which would later be used towards the Class 2 claim of Travis Credit Union.
5. Debtor has not provided the class 1 Checklist to Trustee.

CREDITOR'S OPPOSITION

Creditor, Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust ("Creditor") filed an Opposition on March 11, 2019. Dckt. 52. Creditor opposes confirmation because **Debtor's plan only provides \$61,984.12 to cure the arrears of Creditor amounting to \$63,168.59**. Creditor argues this fails to provide the full value of its secured claim, does not promptly cure arrears, and the plan is not feasible.

DISCUSSION

The Opposing grounds of Trustee and Creditor are well-taken.

Debtor's proposed plan relies on the avoidance of two of creditor Capital One's liens. A review of the docket shows that while the court granted those motions, one of the liens remains in the amount of \$2,342.34. Therefore, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Trustee filed an Objection to claim of exemptions, set to be heard the same day as the hearing on this Motion. Dckt. 32. A review of the docket shows the court sustained that Objection. Therefore, Debtor has significant non-exempt equity and appears to fail the liquidation test. 11 U.S.C. § 1325(a)(4).

Debtor received several thousands of dollars from tax refunds in 2018 and 2017. Declaration, Dckt. 30. However, the proposed plan does not contemplate Debtor committing any refund. Therefore, the Plan violates 11 U.S.C. § 1325(b)(1).

Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to Trustee. Debtor has not provided these forms. Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor is not providing for the full claim of Creditor, holding a secured claim. Failure to so provide demonstrates the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The 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 Benjamin Edward Avila and Kristie Lea Avila (“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 Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

26. [17-27397-E-13](#) **GEVORG POLADYAN AND** **MOTION TO CONFIRM PLAN**
[GEL-5](#) **ARMINE ASATRYAN** **2-19-19 [121]**
Gabriel Liberman

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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2019. By the court’s calculation, 28 days’ notice was provided ^{FN.1}. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

 FN.1. Debtor initially filed a Notice setting the hearing for March 12, 2019. Dckt. 125. Debtor then provided an Amended Notice on February 26, 2019 setting the current hearing date. Dckt. 129.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Plan is **denied.**

Gevorg George Poladyan and Armine Asatryan (“Debtor”) seeks confirmation of the Chapter 13 Plan in this case, which provides in pertinent part as follows:

Monthly Plan Payments.....	\$4,405.00
Plan Term.....	60 Months
Debtor’s Counsel Fees.....	\$5,000 to be paid through the Plan, with \$1,000 paid prior to filing the case

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 5, 2019. Dckt. 133. Trustee opposes confirmation on the basis the plan is not feasible because it relies on the court disallowing part of Creditor's claim. Debtor states "friends and family" would assist paying the Creditor's claim if allowed in full, but does not provide substantiating evidence.

DISCUSSION

Both Debtor's original proposed plan and the First Amended Plan were attested to under penalty of perjury. In the original plan, Debtor states \$2,620.00 was paid prior to filing to Debtor's counsel. Dckt. 62. In the First Amended Plan, this amount was reduced to \$1,000.00. Dckt. 125. No explanation is offered for the conflicting statements.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

Creditor and Trustee both raise additional grounds for opposition related to the claim of Creditor. The First Amended Plan proposes to pay 100 percent of claims. *Id.* However, in the event Debtor is not successful in Objection to Creditor's claim, the plan would not be Debtor's best efforts and would not be feasible.

That Objection is the subject of two Adversary Proceedings, nos. 18-02014 and 18-02130. The court has a trial date in those Adversary Proceedings for August 5 and 6, 2019. Dckt. 52.

~~The 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 Gevorg George Poladyan and Armine Asatryan ("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 Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 12, 2019. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Modified Plan is XXXXXXXXXXXXXXXXXX.

Tommie Erskins Richardson (“Debtor”) seeks confirmation of the Modified Plan to provide exempt funds be paid to Debtor and to pay claims that arose from escrow when Debtor’s house was sold. Declaration, Dckt. 171. The Modified Plan provides for 60 payments of \$600.00, a lump sum payment of \$160,570.66, and a 45 percent dividend to unsecured claims (for an estimated \$88,800.00 distribution). Modified Plan, Dckt. 172. The Modified Plan also authorizes payment of claims made against sale proceeds, and of \$18,450.00 in exempt funds back to Debtor. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Review of Prior and Proposed Modified Plan

In light of the Opposition filed by Seneca Leandro View, LLC, a review of the terms of the current confirmed Plan and the Proposed Modified Plan is beneficial.

	Confirmed Fourth Amended Chapter 13 Plan, Dckt. 155 Order, Dckt. 167	Proposed First Modified Chapter 13 Plan, Dckt. 172
Plan Funding	\$167,660.66 as of August 18, 2018 \$600 a month for 48 months, Commencing September 2018, which totals an additional \$28,800	\$160,570.66 Payment \$600 a month for 60 months, which totals an additional \$36,000
Plan Term	60 Months	60 Months
Class 1 Claim Payments	None	None
Class 2 Claim Payments	Wells Fargo Bank \$19,639.23 at 4.00% Interest Collateral: 2014 Jaguar	Wells Fargo Bank \$19,639.23 at 4.00% Interest Collateral: 2014 Jaguar
Class 3 Claim Surrender	Alameda County Tax Collector Caliber Home Loans 1902 and 1904 Filbert St.	Alameda County Tax Collector Caliber Home Loans 1902 and 1904 Filbert St.
Class 4 Claim Direct Secured Payments For claims not in default	US Bank \$2,601.48/month Collateral: 11179 Graeton Cir.	US Bank \$2,601.48/month Collateral: 11179 Graeton Cir.
Class 5 Claim - Priority Payment	\$15,160.03	\$15,160.03
Class 6 Claim - Special Treatment	None	None
Class 7 Claims - General Unsecured Payment	57% Dividend \$197,835.36 in projected claims Estimated Plan Funding Amount of \$112,766	45% Dividend \$197,835.36 in projected claims Estimated Plan Funding Unsecured Claim Amount of \$89,025.91

Under the existing confirmed Plan the required Debtor funding is computed to be \$196,460.66.

However, under the proposed First Modified Plan Debtor is required to fund the plan with \$196,570.66, approximately the same amount. There is \$7,000.00 that appears to be reduced from the amounts stated to have been made under the Confirmed Fourth Amended Plan as of August 18, 2018,

when it was confirmed.

Added to the additional provisions is a direction to pay Alameda County Property Taxes of \$31,277.55 (to the California State Controller), \$335.00 to the City of Oakland for garbage (presumably garbage service), and \$2,257.38 for “City Wide Liens.” First Modified Plan, p. 7; Dckt. 172.

The court does not see any proofs of claim for the above amounts.

The Motion does not make reference to these amounts. Dckt. 169. Debtor does not state the grounds for modifying the Plan, but dictates that the court is to read Debtor’s declaration to assembly for the Debtor and state with particularity the grounds (Fed. R. Bankr. P. 9013) upon which the Motion is based.

The Motion is also inconsistent with the proposed First Modified Plan which requires the lump sum payment and sixty monthly payments of \$600. The Motion states that some, not stated with any particularity (or even generally as to number and amount) defaults will “be forgiven and plan payments of \$600.00 will continue February 25, 2019 for 43 months to complete the Plan within the maximum term allowed by law.” First Modified Plan ¶ 5, Dckt. 169.

While not stated in the Motion, in his Declaration Debtor testifies:

2. My plan is being amended to provide the exempt funds to be paid to me and to pay claims that arose from the escrow when the house was sold.

Declaration ¶ 2, Dckt. 171.

Debtor does not testify as to any defaults or other events that have occurred notwithstanding Debtor’s good faith efforts to perform the Plan he had the court confirm (in reliance on his prior motion and declaration). Rather, the amendment is stated to be only so the Debtor can now claim an exemption.

Debtor goes further, stating under penalty of perjury that he has not defaulted in any payments under his Plan. Declaration ¶ 3, *Id.* This statement under penalty of perjury is contrary to Debtor’s statement made subject to the certifications of Federal Rule of Bankruptcy Procedure 9011 in the Motion.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on March 12, 2019. Dckt. 179. Trustee notes Section 7.02 of the Modified Plan allows for payment of claims against sale proceeds of Debtor’s home, which was previously omitted from the Order Confirming the Confirmed Plan. Dckt. 167.

Trustee does not oppose confirmation of the Modified Plan, and states the plan computes mathematically.

CREDITOR'S OPPOSITION

Creditor, Seneca Leandro LLC ("Creditor"), filed an Opposition on March 11, 2019. Dckt. 182. Creditor argues that Debtor's proposed modification should be denied based on the following grounds:

- A. Debtor's it fails 11 U.S.C. § 1325 because it does not provide Creditor the same value it would receive as when the plan was "certified." Creditor argues the lower dividend now provided to unsecured claims results from Trustee paying \$20,000.00 towards the claim of Wells Fargo, N.A., and \$18,450.00 Debtor is proposing to keep as exempt funds.
- B. Modification should be denied under the principles of *res judicata* because Debtor did not claim an exemption in sale proceeds of his home under the Confirmed Plan and therefore should be barred from now seeking an exemption.
- C. Debtor's Modified Plan has not been proposed in good faith where (1) the property Debtor claims was "sold" was not his personal residence and was actually foreclosed on, (2) the foreclosure (not sale) of Debtor's property was before the Confirmed Plan was confirmed.
- D. The Modified Plan significantly reduces the dividend to Creditor, from \$111,150.00 to 87,750.00.
- E. The Modified Plan is self serving and does not provide Creditor's interest adequate protection because Debtor is proposing to keep as exempt funds \$18,450.00.

DEBTOR'S REPLY

Debtor filed a Reply on March 19, 2019. Dckt. 187. Debtor responds to Creditor's arguments as follows:

- 1. The Modified Plan was filed to provide for claims that were only inadvertently not provided for in the Order Confirming.
- 2. The claim of Wells Fargo, N.A. was paid for with Debtor's disposable income.
- 3. Debtor's exemption of \$18,450.00 has not been opposed.
- 4. The Modified Plan meets the liquidation test.

5. The Modified Plan meets the requirements of 11 U.S.C. § 1329.
6. Debtor having paid Wells Fargo, N.A.'s claim early preserves an extra \$5,000.00 for unsecured claims.
7. Debtor's \$18,450.00 exemption is valid.
8. Debtor withdrew his Objection to Claim because Debtor no longer sought to oppose the Proof of Claim.

REVIEW OF CREDITOR'S CLAIM AND CASE HISTORY

Creditor's Claim

Creditor originally filed Proof of Claim 7-1 on December 20, 2017 ("First Objection") asserting an unsecured claim in the amount of \$422,600.00. Debtor filed an Objection on January 12, 2108 seeking to disallow that claim (Dckt. 52), and the court issued an Order sustaining that Objection on March 4, 2018. Order, Dckt. 77.

On February 13, 2019 Amended Claim 7-2 was filed again asserting a claim of \$422,600.00. Then Creditor filed Amended Claim 7-3 on March 27, 2019 stating a claim of \$195,000.00.

Debtor filed an Objection to Amended Claim 7-3 on April 13, 2018 ("Second Objection") arguing that Creditor failed to provide evidence of amounts owing above \$15,000.00. Dckt. 87. Creditor filed a Response on May 22, 2018 arguing that Debtor entered into a residential income property agreement without disclosing to Creditor that Debtor was behind on payments to the second deed of trust. Creditor argued that when the Debtor's property was foreclosed on (though before escrow), it lost out on a possible \$195,000.00 in profit it would have achieved (the difference between the fair market value of \$940,000.00 and the \$760,000.00 contract price).

At the first hearing on the Second Objection, the court noted that Creditor had not provided any evidence, Objector had not provided clear legal arguments, and therefore continued the hearing to allow the parties to cure those shortcoming. Civil Minutes, Dckt. 118. Before the second hearing, the court subsequently issued an Order setting a Scheduling Conference. Order, Dckt. 121.

At the third hearing on the Second Objection, the court set the Objection for evidentiary hearing. Civil Minutes, Dckt. 131.

On July 20, 2018 Debtor filed a Status Report informing the court that Creditor and Debtor were working on a settlement agreement. Status Report, Dckt. 139. At the fourth hearing, the Debtor moved to withdraw the Objection, pursuant to Federal Rule of Civil Procedure 41(a)(2). Civil Minutes, Dckt. 143. The court issued an Order dismissing the matter. Order, Dckt. 144.

Confirmed Plan

Debtor filed the Confirmed Plan on August 29, 2018, which was the Fourth Amended Plan. Dckt. 155.

Creditor did not provide written opposition to the confirmation of that Plan, and did not appear at the confirmation hearing October 23, 2018. Civil Minutes, Dckt. 165. The court issued an Order Confirming the Plan on December 2, 2018. Order, Dckt. 167.

DISCUSSION

Creditor Failed to Authenticate Exhibits

Creditor filed three Exhibits in support of Creditor's Opposition. Those Exhibits are identified as:

- | | |
|------------|---|
| Exhibit 1: | Trustee's Deed |
| Exhibit 2: | Addendum to Purchase and Sale Agreement |
| Exhibit 3: | Tax Bill for 11179 Graeton Circle, Mather, California |

Dckt. 185. No declaration or other evidence was provided showing the court these documents are what they are purported to be as required by the Federal Rules of Evidence § 901 *et seq.* No argument is provided explaining why these documents are admissible evidence and not hearsay. *See* FED. R. EVID. 601, 602.

Possibly most crucial here, no evidence is provided to the court to explain what these documents are and why they are relevant.

Debtor's Modified Plan and the Liquidation Test

Creditor opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Creditor argues that the Modified Plan does not provide the same value as the Confirmed Plan.

The relevant portion of the Bankruptcy Code here provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

...

11 U.S.C. § 1325(a)(4).

Creditor does not here argue Debtor's Modified Plan provides less to any creditor than they would receive in a Chapter 7 case. While Creditor is receiving less than under the Confirmed Plan, the Bankruptcy Code specifically permits a confirmed plan may be modified to reduce the amount of payments on claims of a particular class. *See* 11 U.S.C. § 1329(a)(1).

Debtor's Modified Plan – Good Faith Requirement

Creditor argues Debtor's Modified Plan does not meet the requirements of 11 U.S.C. § 1329 because it was not proposed in good faith. Creditor argues Debtor inaccurately states in support of the Modified Plan that Debtor's property was sold (as opposed to foreclosed), that sale was after confirmation, and that Debtor provides less to unsecured creditors than under the Confirmed Plan.

The Debtor begins to play into Creditor's Opposition concerning good faith in providing conflicting testimony under penalty of perjury in his Declaration and in the Motion. Debtor also offers no explanation as to why or how the funding of the Plan which Debtor has previously stated under penalty of perjury and subject to Federal Rule of Bankruptcy Procedure 9011 to be \$167,660.66 as of August 18, 2018, is to be retroactively reduced to \$160,570.66.

Debtor now states that he desires to modify the plan for (the only reason stated in his Declaration) the purpose of claiming an \$18,450.00 exemption in the monies held by the Chapter 13 Trustee.

On the Petition Debtor states that at the time the bankruptcy case was filed he lived at the 11179 Graeton Circle Property. Dckt. 1 at 2. On the Statement of Financial Affairs, Question 3, Debtor confirms that he has lived at the Graeton Circle Property for at least three years prior to the commencement of this bankruptcy case. Dckt. 13 at 25.

On Schedule C Debtor claimed an exemption of \$18,450.00 in the 1902 & 1904 Filbert Street Property pursuant to California Code of Civil Procedure § 703.140(b)(5), the "wildcard exemption." Dckt. 13 at 10. This was filed on August 21, 2017 - fifteen months before the order confirming the Fourth Amended Plan in this case was filed on December 2, 2018. Dckt. 167.

\$167,660.66 as of August 18, 2018	\$160,570.66 Payment
\$600 a month for 48 months, Commencing September 2018, which totals an additional \$28,800	\$600 a month for 60 months, which totals an additional \$36,000

As outlined above, the current confirmed Fourth Amended Plan is funded with \$196,460.66, which under the proposed First Modified Plan Debtor has to fund it with \$196,570.00, an amount slightly more that under the Fourth Amended Plan.

Debtor is not attempting to reduce the funds available for creditors.

From the evidence presented, the Modified Plan is proposed in good faith.

Exemption Not Litigated During Plan Confirmation

Creditor further argues that *res judicata* prohibits Debtor from seeking an exemption because the exemption amount was an issue that could have been dealt with at the time of confirmation of the Plan. Creditor argues that an agreement was reached to resolve their disputed claim in which Creditor agreed not to oppose the Confirmed Plan. Opposition, Dckt. 182 at 5:1-3.5.

Confirmation has preclusive effect, foreclosing relitigation of “any issue actually litigated by the parties and any issue necessarily determined by the confirmation order.” *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015); *See* 11 U.S.C. § 1327.

Here, the amount of any claimed exemption by Debtor was not litigated during the hearings on the Confirmed Plan for a simple reason – objection to claims of exemption are not a confirmation issue.

Creditor chose not to file an Objection to Debtor’s claim of exemption - likely because Creditor and its then counsel recognized that it did not have any bona fide objection.

Creditor does not argue that a Debtor is locked in to all claimed exemptions after confirmation of the plan. Debtor’s exemption was not actually litigated or necessarily determined at the confirmation hearing.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 4003(b) that objections to claims of exemptions must be filed within 30 days of the first meeting of creditors being concluded or the subsequent filing of amended exemptions. The First Meeting of Creditors in this case was concluded on September 21, 2017. Trustee’s September 26, 2017 Docket Entry Report. The time to object has long passed.

Creditor does not have the right to disguise an objection to exemption as a plan confirmation issue.

Adequate Protection Is Not Required

Creditor confusingly argues that the plan does not adequately protect its interest in the Estate. Opposition, Dckt. 182 at 6:15.5-16.5. The Bankruptcy Code in 11 U.S.C. § 361 provides the following:

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity’s interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361(emphasis added). One treatise provides the following applicable discussion of adequate protection in the context of the Bankruptcy Code:

Adequate protection is a concept that is integral to the operation of the automatic stay. Basically, while the stay is in effect and the bankruptcy case proceeds, the Code recognizes that the debtor should not be able to have the benefit of the stay with respect to the property in which another party has an interest unless the debtor protects the value of the creditor's interest in the property. Adequate protection also underlies the debtor's rights under 11 U.S.C.A. § 363 to use, sell, or lease estate property, including cash collateral and the debtor's rights under 11 U.S.C.A. § 364 to enter into postpetition financing transactions using a secured creditor's collateral. In order to meet policy and constitutional concerns, while § 362 of the Code imposes an automatic stay on creditor actions against property that is encumbered, it does so only if the debtor furnishes the creditor with adequate protection. Adequate protection is not defined, but § 361 provides several nonexclusive illustrative methods of providing adequate protection. Where adequate protection is required, the court has no discretion to relieve the debtor of debtor's obligation to supply it.

Unsecured creditors are not entitled to adequate protection. The issue of adequate protection, instead, normally arises in the context of a creditor's security interest in collateral that the debtor wants to retain, utilize, or sell. Secured creditors are entitled to different rights depending on the value of their collateral in relation to the amount of the debt. Section 506 of the Bankruptcy Code provides the ability to bifurcate secured claims into an oversecured and undersecured portion. It provides that a claim is a secured claim only up to the value of the collateral. When the amount of the debt exceeds the value of the collateral, the creditor is considered undersecured and has a secured claim for the value of the collateral and an unsecured claim for the difference between the amount of the debt and the lower value of the collateral.¹¹ When the value of the collateral exceeds the amount of the debt, the creditor is considered to be oversecured and has a secured claim for the full amount of the debt and is also entitled to accrue postpetition interest up to the value of the collateral.

ADEQUATE PROTECTION—GENERALLY, 1 BANKRUPTCY LAW MANUAL § 7:58 (5th ed.)(emphasis added).

Creditor here has only an unsecured claim. Therefore, Debtor is not required to provide adequate protection.

“Self-serving” exemption

Creditor argues the exemption claimed by Debtor and Modified Plan’s provision abandoning those funds to Debtor are self serving. Creditor has not provided case law, statutory, or rule authority for the proposition Debtor is prohibited from making “self-serving” decisions.

Creditor’s argument seems to conflict with the very basic purpose of Bankruptcy. Colliers provides the following discussion on a debtor’s claim of exemption:

A fundamental component of an individual debtor’s fresh start in bankruptcy is the debtor’s ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.

4 COLLIER ON BANKRUPTCY P 522.01 (16th 2018).

It is hard to contemplate a scenario where a claimed exemption would not be self-serving.

It also strikes the court that Creditor’s claim is an equally self-serving action taken. Additionally, Creditor’s opposition to the present Motion is self-serving. When parties exercise their rights, such is acting in one’s best interests, or as Creditor contends self-servicing – whether it is the creditor asserting its claim or Debtor asserting his exemption.

Ruling

Based on the evidence presented, the Trustee not asserting any opposition to confirmation, and considering Creditor’s opposition asserted to advance it’s self-interest, the court concludes that the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329.

In reviewing the claims filed in this case, the following unsecured claims and their filing dates are set out below:

Proof of Claim No. 2-2 Franchise Tax Board Priority Unsecured Filed November 27, 2017	\$689.05
Proof of Claim No. 5-1 Internal Revenue Service Priority Unsecured Filed December 1, 2017	\$35,171.93
Total Priority Unsecured	\$35,860.98

Proof of Claim No. 3-1 Bank of America, N.A. General Unsecured Filed October 27, 2017	\$2,032.10
Proof of Claim No. 4-1 Pinnacle Credit Services LLC General Unsecured Filed November 15, 2017	\$369.61
Proof of Claim No. 7-3 Seneca Leandro View LLC General Unsecured Filed March 27, 2018	\$195,000.00
Total General Unsecured Claims	\$197,401.71

A rough calculation of the plan payments, secured claims to be paid and the anticipated funding of the proposed First Modified Plan is set out below:

Total Plan Funds Over 60 Months	\$196,570.00
Class 2 Secured Claim Payments \$19,639.23 Lump Sum Payment	(\$19,639.23)
Priority Unsecured Claims	(\$35,860.98)
Chapter 13 Fees For Confirmation of Fourth Amended Plan and Related Post-Confirmation Hearing	(\$3,500.00)
Chapter 13 Trustee Fees (Est. at 8%)	(\$15,727.00)
Exempt Proceeds	(\$18,450.00)
Liens on Proceeds From Sale of Filbert Street Properties	(\$32,869.93)
Portion for Unsecured Claims	\$70,522.86

With \$197,401.71 in general unsecured claims and \$70,522.86 for disbursements on such claims, it appears that there will be only a maximum of a 35.7% dividend. This falls short of the 45% minimum required under the proposed First Modified Plan.

At he hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

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 Modified Chapter 13 Plan filed by Tommie Erskins Richardson (“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 Debtor’s Modified Chapter 13 Plan filed on February 12, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“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.~~

28. [18-27755-E-13](#)
[DPC-1](#)

MARK/RENEE EVANS
Peter Macaluso

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
1-18-19 [17]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 18, 2019. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). Debtor, Creditors, the Chapter 13 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 Objection, 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 Objection. At the hearing -----
-----.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtors, Mark and Renee Evans ("Debtor"), admitted at the Meeting of Creditors that debtor Mark Evans makes \$58 per hour, where Schedule I reflects a hourly salary of only \$32.91.
- B. Debtor lists businesses United Global, LLC and Big Sky International, Inc., on Statement of Financial Affairs question 27, but fails to report the businesses on Schedule A/B except possibly as an accounts receivable

for \$1 and \$25,000 held in trust by attorneys.

- C. Debtor proposes to pay unsecured claims during the first 36 months and student loans in the remaining 24 months. Where Debtor is paying student loans more than general unsecured claims, the plan may unfairly discriminate in violation of 11 U.S.C. § 1322(b)(1).

FEBRUARY 12, 2019 HEARING

At the February 12, 2019 hearing, the court continued the matter to the March 26, 2019 hearing date to allow Debtor to file supplemental pleadings to address Trustee's Objection.

The court issued an Order continuing the hearing and requiring Debtor file an Opposition by March 1, 2019, and Trustee to file a Reply (if any) by March 8, 2019. Dckt. 35.

DEBTOR'S OPPOSITION

On February 28, 2019, Debtors filed an opposition. Dckt. 39. Debtors make four assertions in their Opposition:

- A. Debtor has submitted amended Schedules I and J that reflect their change in income and expenses due to new employment.
- B. Debtor opposes the Objection to Exemption filed by the Trustee regarding their medical product liability case.
- C. Debtor is current in plan payments
- D. Debtor is below the median income and is not required to propose more than a 36 month plan.

Debtor does not provide his declaration or other evidence (other than possibly the changed Schedules I and J, for which no explanation is provided under penalty of perjury) in support of such contentions.

In reviewing the second changed Schedules I and J, Debtor and Debtor's counsel state that they are both amended schedules, that are effective back to December 14, 2018, and supplemental schedules for which the information is accurate only from March 16, 2019. Dckt. 46. Debtor makes this inconsistent statement under penalty of perjury.

TRUSTEE'S REPLY

Trustee filed a Reply on March 6, 2019. Dckt. 42. In the Reply, Trustee provides updates to the grounds for Objection as follows:

- 1. Debtor's filed Amended Schedules to Reflect debtor Mark Evan's new employment and net wage change of \$2,880.00. Debtor decreased expenses by \$2,687.00

2. Debtor's plan satisfies the liquidation test.
3. Debtor is current in proposed plan payments.
4. Debtor's plan provides for treatment of "student loans" but does not identify which claims are "student loans."
5. The proposed plan does not specify a percentage dividend to "student loans."
6. Debtor argues there is no unfair discrimination against different unsecured claims because Debtor can end the plan in 36 months and only voluntarily pays student loans for an additional two years. Trustee argues Debtor has not provided analysis or authority for why this is not discrimination.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Reply on March 19, 2019. Dckt. 48. Debtor states another modified Schedules I and J were filed.

Debtor also clarifies that claims 13, 15, 34, 35, 36, and 37 are those addressed as "student loans" in section 7 of the proposed plan. Debtor further clarifies student loans are to be paid no less than 0.03 percent through the plan, and requests this language be added to the order confirming plan.

Debtor does not provide his declaration or other evidence (other than possibly the changed Schedules I and J, for which no explanation is provided under penalty of perjury) in support of such contentions.

DISCUSSION

Debtor proposes to pay unsecured claims during the first 36 months a dividend of 0.6 percent, and "student loans" in the remaining 24 months a dividend of 0.3 percent. Debtor argues this does not discriminate between unsecured claims because Debtor can end his plan in 36 months, and only voluntarily opt to extend payment to "student loans" for another 2 years.

Colliers provided the following discussion on unfair discrimination:

A chapter 13 plan may designate one or more classes of unsecured claims in the same manner authorized under chapter 11.

The plan may not unfairly discriminate against any class of claims. The courts have not been entirely consistent in construing the prohibition against unfair discrimination. **"Unfair discrimination" against a class of claims normally refers either to the order of distribution or the percentage to be paid the particular class.** Unless there is some valid justification for paying one class of claims more than another, such discrimination is considered unfair. Similarly, a

proposal to defer distribution on the claims of one class of general unsecured claims until after the completion of payments to another class might very well be considered unfair discrimination against the deferred class, depending on the circumstances of the case.

Section 1322(b)(1) permits the designation of classes of unsecured claims as authorized under chapter 11 by section 1122. Section 1122(a) codifies Chapter XI case law, restricting membership in a particular class to claims that are “substantially similar.” The exception contained in section 1122(b) expressly permits the designation of a separate class of relatively small claims, as permitted by the court, for administrative convenience, regardless of whether such claims are substantially similar.

Similarly, there can be no doubt that a plan may separately classify priority claims. Section 1322(a)(2) requires that, with a very limited exception, a chapter 13 plan must propose to pay priority claims in full. If the debtor could not separately classify priority claims, this provision would, in effect, require all unsecured claims to be paid in full whenever a priority claim exists, a result clearly not contemplated by the statute or its legislative history.

8 COLLIER ON BANKRUPTCY P 1322.05 (16th 2018).

Here, the “student loans” are unsecured claims. Those loans will receive the 0.6 percent dividend during the first 3 years, and another 0.3 percent dividend over the next 2 years for a total dividend of 0.9 percent. Unsecured loans which happen not to be “student loans” will only receive 0.6 percent through the proposed plan.

Debtor has not here argued that “student loans” should be a separate classification, or that there is fair discrimination. Rather, Debtor argues that there is no discrimination because the plan could hypothetically be completed within 36 months.

The plan provides for some unsecured claims to get 0.6 percent and other unsecured claims to get 0.9 percent of their claim paid. Therefore, the plan discriminates between unsecured claims of the same classification.

Without any reason for the discrimination provided, the court finds the discrimination is unfair.

Consideration of Good Faith and Differing Statements Made Under Penalty of Perjury

The Debtor has evolved through three Schedules J in this case, with the court creating the chart below showing the unexplained differences (Debtor failing or unwilling to provide testimony explaining such).

Expense	Original Schedule J Filed 12/14/2018 Dckt. 1 at 51-52	First Amended and Supplemental Schedule J Filed 2/15/2019 Dckt. 29 at 14-15	Second Amended and Supplemental Schedule J Filed 3/19/2019 Dckt. 46 at 6-7
Rent/Mortgage	\$1,418.25	\$1,418.25	\$1,418.25
Home Maintenance	\$100.00	\$18.00	\$100.00
Electricity/Nat Gas	\$397.00	\$397.00	\$397.00
Water/Sewer/Garbage	\$128.14	\$128.14	\$128.14
Phone/Internet/Cable	\$320.00	\$320.00	\$320.00
Food/Housekeeping Supplies	\$900.00	\$500.00	\$900.00
Clothing/Laundry	\$250.00	\$15.00	\$150.00
Personal Care Products	\$280.00	\$25.00	\$150.00
Medical/Dental Expense	\$100.00	\$25.00	\$300.00
Transportation	\$500.00	\$250.00	\$400.00
Entertainment	\$142.55	\$42.55	\$108.00
Charitable/Religious Contributions	\$1,000.00	\$0.00	\$0.00
Vehicle Insurance	\$350.00	\$350.00	\$350.00
DMV Reg	\$50.00	\$50.00	\$50.00
Car Pmt 1	\$275.81	\$275.81	\$275.81
Car Pmt 2	\$439.80	\$439.80	\$439.80
Total Expenses	\$6,651.55	\$4,254.55	\$5,487.00
		(No explanation is provided for this -36% reduction in expenses from that previously stated under penalty of perjury to be actual and necessary.)	(No explanation is provided for this 29% increase in expenses from that previously stated under penalty of perjury to be actual and necessary.)

Based on original Schedule I (understating income) and original Schedule J (with the highest expenses), Debtor states in the original plan that they were able to only scrape together \$300 a month to fund a plan. Dckt. 4. With this very small monthly plan payment Debtor could only provide a 0.60%

(six tenths of one percent) dividend to creditors holding general unsecured claims.

Debtor has then yo-yoed through two additional Schedules I and J, but each time managing to keep the monthly net income on each Schedule J at exactly \$300.00. Dckt. 1 at 52, Dckt. 29 at 15, and Dckt. 46 at 7.

Based on the evidence presented, the court determines that the expenses are merely made up numbers which these two debtors, with the assistance of their counsel, are willing to misstate under penalty of perjury so long as “they all WIN!” These changes are not minor, but gross (both in amount and willingness to make such misstatements under penalty of perjury). Originally, to get to the magic \$300 a month number, Debtor stated under penalty of perjury that they made \$1,000 a month charitable or religious contributions.

Then, when it appeared that they needed to reduce expenses, their religious or charitable contribution of \$1,000 a month went out the window. Debtor’s “reasonable and necessary” home maintenance, food and housekeeping supplies, clothing, laundry, personal care products/services, medical and dental expenses, transportation, and entertainment expenses were slashed in the First Amended and Supplemental Schedule J. Dckt. 29.

But then when the Trustee identified that Debtor’s income was higher, the “reasonable and necessary expenses” were pumped back up by Debtor and Debtor’s counsel. Dckt. 46. These include:

Home Maintenance Expense.....	455.55% increase
Food/Housekeeping Supplies.....	80.00% increase
Clothing/Laundry.....	900.00% increase
Personal Care Products/Services.....	600.00% increase
Medical/Dental Expenses.....	1,100.00% increase
Transportation.....	60.00% increase
Entertainment.....	153.82% increase

Debtor provides no testimony as to how Debtor could be so grossly wrong as to their actual, necessary, and reasonable expenses. Debtor provides no explanation even though represented by knowledgeable bankruptcy counsel, who is well aware that when such gross changes are made it is necessary for the person giving grossly conflicting statements under penalty of perjury to provide evidence as why their latest statements under penalty of perjury are correct and the prior statements are the wrong ones.

As noted above, Debtor has provided these grossly conflicting statements under penalty of perjury with the assistance of counsel. Additionally, the court has addressed with Debtor’s counsel a number of times that the schedules cannot be both amended (dating back to the filing of the case) and supplemental (dating only from a post-petition date). Given that Debtor’s counsel is continuing to repeatedly do this, the court concludes that it is intentional and being done for some perceived (improper) advantage for Counsel’s clients.

Debtor is required to have not only filed the bankruptcy case in good faith, but propose the plan and then prosecute the plan in good faith. *See* 11 U.S.C. § 1325(a)(3) and (7), and Fed. R. Bankr. P. 9011 as two examples of such good faith, truthful requirements in these federal court proceedings.

The Debtor’s unexplained stating of expenses, evaporating expenses, reducing expenses, and

then increasing expenses to always come to \$300.00 a month in net monthly income is not in good faith, is not truthful, and is not accurate.

It appears that Debtor's loose association with the truth may well have rendered them unbelievable witnesses in any further federal court bankruptcy proceeding - this case or subsequent cases. It may be that the Chapter 13 Trustee and U.S. Trustee, in addition to other steps they may think appropriate, will seek the dismissal of this bankruptcy case with prejudice (rendering all of Debtor's obligation in this case non-dischargeable in this and any future bankruptcy case).

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

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

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

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

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

FINAL RULINGS

29. [17-24005-E-13](#) **STEPHAN SMITH AND** **MOTION TO MODIFY PLAN**
[MRL-2](#) **MICHELLE AFFINITO** **1-21-19 [36]**
 Mikalah Liviakis

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2019. By the court’s calculation, 64 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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. Stephan Keith Smith and Michelle Victoria Affinito (“Debtor”) have filed evidence in support of confirmation. Declaration, Dckt. 38. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on March 11, 2019. Dckt. 54. 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.

31. [17-23911-E-13](#) **CRAIG MASON**
[LBG-101](#) **Lucas Garcia**

MOTION TO CONFIRM PLAN
2-6-19 [146]

DEBTOR DISMISSED: 02/25/19

Final Ruling: No appearance at the March 26, 2019 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 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.

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2019. By the court’s calculation, 37 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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. Tommy Lee Cordray and Sherri Annette Cordray (“Debtor”) have filed evidence in support of confirmation. Declaration, Dckt. 36.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 11, 2019. Dckt. 43. Trustee opposed the Motion on the basis Debtor filed Schedules I and J on February 17, 2019 as Amended and not Supplemental. *See* Schedules I and J, Dckt. 39.

On March 14, 2019 Debtor filed Supplemental Schedules. Dckt. 46.

Subsequently, on March 15, 2019, Trustee filed a Supplemental Response indicating his grounds for opposition have been resolved. Dckt. 48.

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 Modified Chapter 13 Plan filed by Tommy Lee Cordray and Sherri Annette Cordray (“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 Debtor’s Modified Chapter 13 Plan filed on February 17, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“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.

DISCUSSION

Creditor objects in part based on Debtor's attempt to value its collateral. Debtor filed a Motion to Value Collateral of Creditor which is set for hearing April 2, 2019. at 3:00 p.m. Dckt. 37. The court shall continue the hearing on this Objection to that date to be heard alongside 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 Ford Motor Credit Company, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to April 2, 2019 at 3:00pm.

34. [19-20026-E-13](#) THOMAS IVERS
[DPC-2](#) Lucas Garcia
DAVID P. CUSICK

OBJECTION TO DISCHARGE BY
2-13-19 [\[20\]](#)

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on February 13, 2019. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Thomas James Ivers’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on September 5, 2018. Case No. 18-25616 Debtor received a discharge on December 13, 2018. Case No. 18-25616, Dckt. 18.

The instant case was filed under Chapter 13 on January 3, 2019.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 13, 2018, which is less than four years preceding the date of the filing of the instant case. Case No. 19-20026, Dckt. 1. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20026), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee (“Objector”) 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 Discharge is sustained, and upon successful completion of the instant case, Case No. 19-20026, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on February 19, 2019. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Orlando Cisneros’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on April 25, 2018. Case No. 18-22528 Debtor received a discharge on January 9, 2019. Case No. 18-22528, Dckt. 99.

The instant case was filed under Chapter 13 on January 10, 2019.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 9, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-22528, Dckt. 99. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-20132), the case shall be closed without the entry of a discharge, and Debtor shall receive no

discharge in the instant case.

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

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

The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, (“Objector”) 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 Discharge is sustained, and upon successful completion of the instant case, Case No. 19-20132, the case shall be closed without the entry of a discharge.

DEBTOR DISMISSED: 02/25/19

Final Ruling: No appearance at the March 26, 2019 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 Value 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.

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 18, 2019. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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.

<p>The Motion to Confirm the Plan is granted</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Robert Hunter (“Debtor”) has provided evidence in support of confirmation. Declaration, Dckt. 80. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on March 5, 2019. Dckt. 83. The 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 Robert Hunter (“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 Debtor's Chapter 13 Plan filed on February 18, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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. [17-24456-E-13](#)
[PGM-1](#)

MICHAEL BRISSETTE
Peter Macaluso

MOTION TO MODIFY PLAN
2-11-19 [33]

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 12, 2019. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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. Michael Ray Brissette (“Debtor”) has filed evidence in support of confirmation. Declaration, Dckts. 35, 36. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on February 11, 2019. Dckt. 37. 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 Modified Chapter 13 Plan filed by Michael Ray Brissette (“Debtor”) having been presented to the court, and upon review of

Under California Code of Civil Procedure § 703.130, California “opted out” of the federal bankruptcy exemptions enumerated in 11 U.S.C. § 522. Therefore, Debtor, a resident of California, is not entitled to the claimed exemptions, the Chapter 13 Trustee’s Objection is sustained, and the claimed exemption is disallowed.

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 Claimed Exemptions filed by David Cusick (“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 Objection is sustained, and the claimed exemption for “Federal Refund” pursuant to 26 U.S.C. § 521 is disallowed in its entirety.

Final Ruling: No appearance at the March 26, 2019 hearing is required.

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

Sufficient 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 February 10, 2019. By the court’s calculation, 44 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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. Cynthia A. Baker (“Debtor”) has filed evidence in support of confirmation. Declaration, Dckt. 56. David Cusick (“the Chapter 13 Trustee”) filed Response indicating non-opposition on March 11, 2019. Dckt. 62. 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 Modified Chapter 13 Plan filed by Cynthia A. Baker (“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 Debtor's Modified Chapter 13 Plan filed on February 10, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.