UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 22.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–21, attempting to first address the items in which short argument is anticipated.

March 27, 2018, at 3:00 p.m.

1.	**18-20105-E-13** **DPC-1**	**SANDRA RANDALL** **Mary Ellen Terranella**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-14-18 [15]**

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 14, 2018. By the court's calculation, 41 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.

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

A. Sandra Randall ("Debtor") failed to appear at the Meeting of Creditors, and

B. The Plan calls for paying attorney's fees of $3,000.00 in Section 3.05, but the Plan does not propose a monthly dividend for administrative expenses.

The Chapter 13 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 the Chapter 13 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).

Additionally, Section 3.05 of the Plan calls for paying attorney's fees of $3,000.00 through the Plan, but Section 3.06 proposes a monthly dividend of $0.00. That does not compute mathematically.

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

2. **16-22495-E-13** **LARRY/MARIANNE HAVENS** **MOTION TO MODIFY PLAN**
HDR-1 **Harry Roth** **2-5-18 [21]**

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, and Office of the United States Trustee on February 5, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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 granted.

Larry Havens and Marianne Havens ("Debtor") seek confirmation of the Modified Plan because it provides for all allowed priority claims, whereas the prior plan was insufficient. Dckt. 24. The Modified Plan proposes plan payments of $600.00 for twenty-one months, followed by $1,050.00 for the remaining thirty-nine months. Dckt. 22. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S LIMITED OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Limited Opposition on March 13, 2018. Dckt. 33. The Chapter 13 Trustee notes that Section 3.14 of the proposed Modified Plan presents a dividend of no less than 0.00% to unsecured claims, but Debtor's Declaration states that the dividend is 0.12%. He notes that the Motion lists both percentages.

The Chapter 13 Trustee argues that if creditors would not receive a dividend in Chapter 7, then he is unsure why Debtor would propose such a small dividend in this case. He argues that if Debtor intends to propose a 0.12% dividend, then the smallest claim will receive $0.64, and the largest will receive $3.12.

If a check that small is not cashed by the claimholder, then the Chapter 13 Trustee argues that Debtor's discharge will be delayed by at least ninety days while the Chapter 13 Trustee cancels the checks.

The Chapter 13 Trustee does not oppose a clarification in an order confirming the Modified Plan.

RULING

The Chapter 13 Trustee has demonstrated that there should not be a dividend as small as 0.12% in this case when the claimholders would not be entitled to receive a distribution through Chapter 7. The proposed Modified Plan lists a 0.00% dividend in Class 6; the references to a 0.12% dividend appear to be only in the pleadings.

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 Larry Havens and Marianne Havens ("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 5, 2018, 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.

3. 16-28127-E-13 CARLOS/ANGEL LORTA MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 2-16-18 [56]

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 16, 2018. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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 granted.

Carlos Lorta and Angel Lorta ("Debtor") seek confirmation of the Modified Plan because Mr. Lorta has been unable to find employment to support an increase in plan payments. Dckt. 59. The Modified Plan proposes plan payments of $100.00 for fifty-five months with a 0.00% dividend to unsecured claims. Dckt. 58. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 13, 2018. Dckt. 63. The Chapter 13 Trustee believes that Mr. Lorta is in fact unemployed, but believes that more detail about Debtor's financial circumstances would be beneficial, particularly whether Debtor will be seeking employment and whether they believe employment during the case to be likely.

DEBTOR'S REPLY

Debtor filed a Reply on March 20, 2018. Dckt. 66. Debtor states that being able to pay more than $100.00 per month is unanticipated, mainly because Mr. Lorta was incarcerated in 2017, which prevented him from seeking employment then and has hindered his prospects now. Additionally, Mr. and Mrs. Lorta are now separated.

Debtor states that Mr. Lorta is living with his father, who is providing for his living expenses at the time being. Mrs. Lorta is living in Debtor's household and is providing for the family expenses, which are asserted to be minimal.

RULING

A review of the docket shows that Schedule J has not been amended in this case to reflect that Mr. and Mrs. Lorta are separated and have different expenses. In the first portion of Schedule J, Debtor states under penalty of perjury that Mr. and Mrs. Lorta do not live in separate households. Dckt. 1 at 42. That statement is now being contradicted by Debtor's Reply. *See* Dckt. 66. Presumably, there would need to be other changes to Schedule J, such as updates for food and housekeeping supplies, utilities, clothing, personal care, mental and dental expenses, to name a few.

On March 23, 2018, the Chapter 13 Trustee filed a Reply in which he states that Debtor's Reply (Dckt. 66) and additional information has resolved his opposition. Dckt. 70.

The court finds that under the unique circumstances of this case as explained by Debtor and the diligence of the Chapter 13 Trustee in investigating the current situation and continued monitoring of the case, the modification is proper.

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 Carlos Lorta and Angel Lorta ("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 granted, and the First Modified Chapter 13 Plan filed February 16, 2018, is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Chapter 13 Trustee shall be lodged with the court.

4. **17-24407-E-13 RPH-3** | **PATRICK/MARGUERITE SEEHUETTER** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE**
Robert Huckaby | **2-7-18 [58]**

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 Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Internal Revenue Service ("Creditor") is denied without prejudice.

The Motion filed by Patrick Seehuetter and Marguerite Seehuetter ("Debtor") to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. The Motion states with particularity (FED. R. BANKR. P. 9013) the following grounds upon which relief is based:

A. The Internal Revenue Service has filed Proof of Claim No. 1 for a secured claim in the amount of $17,196.00.

B. The Internal Revenue Service has a lien on all property of Debtor.

C. JPMorgan Chase Bank has a claim of $28,226.39 secured by Debtor's 2017 Subaru Forester.

D. Disregarding the Subaru, which Debtor believes to be over-encumbered, Debtor's opinion of value for all of Debtor's property is collectively $13,443.

Motion, Dckt. 58. The Motion contains no prayer and does not clearly articulate the relief to be granted. It could be inferred that Debtor is contending that the Internal Revenue Service secured claim should be valued at $13,443, but appears to be intentionally drafted to be vague and not clearly state grounds to avoid the certifications imposed by Federal Rule of Bankruptcy Procedure 9011.

The two debtors in this case, and each of them, provide their testimony under penalty of perjury in support of this Motion in their Joint Declaration. Dckt. 60. The Declaration provides the following testimony:

A. Debtor does not owe any real property.

B. Debtor states that though their Schedule A/B states under penalty of perjury that they had $1,000 in their bank account, it had a balance of $287.51.

C. Debtor believes that their Subaru has a value of $17,752.00, which vehicle is encumbered to secured a $28,226.39 claim.

D. Debtor is only "informed and believe" that the value of their property is not more than $13,443.

Debtor appears unwilling to actually provide testimony as to the value of their property, stating that it is qualified that they are only "informed" by some other source and that for purposes of this motion "believe" that the property should be valued at $13,443.00 so they can prevail on a Motion.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 13, 2018. Dckt. 76. The Chapter 13 Trustee is unsure whether Creditor will oppose the Motion, and he is unsure what property Debtor has included in the Motion. He states that the total amount of personal property on Schedule A/B is $129,544.00.

RULING

Debtor has chosen not to clearly identify what property they seek to have the court value as part of this process. Additionally, Debtor has chosen not to provide personal knowledge testimony in support of the Motion, but only what they have been informed by someone of a value that is advantageous to them.

Valuation under 11 U.S.C. § 506(a) is a two-step process. First, the court values the securing collateral, and then the court values the secured claim at the value of the collateral. Here, Debtor has at best pleaded that there is some collateral that has a value of "$13,443.00, pursuant to Schedule A & B," but Debtor has not shown what property is to be valued. Dckt. 58 at 2:5–6.

Debtor admits in the Motion that Creditor is "[s]ecured by all property of debtor." *Id.* at 2:2. If that is the case, then Debtor's suggestion in the Motion that his property has a value of $13,443.00 contradicts what is listed under penalty of perjury on Schedule A/B.

On Schedule A/B, Debtor does not identify any interests in any real property. Schedule A/B, Part 1; Dckt. 1. However, in Part 2, Debtor lists having personal property having a value of $100,398.00. Even after deducting the value of the Subaru listed on Schedule A/B ($17,752.00), Debtor's personal property still has a value of at least $110,000.00 (Total Personal Property Value of $129,544–$17,752.00). Schedule A/B, stated under penalty of perjury by Debtor; Dckt. 1 at 8–15.

The court determines that the Secured Claim of Internal Revenue Service is fully secured, the collateral having a value of $110,000.00, well in excess of the $17,196.00. Debtor offers no credible evidence to the contrary of their original statements under penalty of perjury on Schedule A/B. Debtor's statement, merely based on information and belief that the $129,544 of personal property has declined to a value of only $13,443.00 is not credible.

Therefore, pursuant to the Motion the court determines that the secured claim of Internal Revenue Service is oversecured and is secured for the full amount of the claim.

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 Collateral and Secured Claim filed by Patrick Seehuetter and Marguerite Seehuetter ("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 secured claim of the Internal Revenue Service, Proof of Claim No. 1, in the amount of $17,196.00 is an oversecured claim, with the collateral securing the claim, all of Debtor's personal property having a value of $110,000.00.

5. **17-24407-E-13 RPH-4** | **PATRICK/MARGUERITE SEEHUETTER** | **MOTION TO CONFIRM PLAN 2-7-18 [62]**

Robert Huckaby

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 7, 2018. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Patrick Seehuetter and Marguerite Seehuetter ("Debtor") seek confirmation of the Amended Plan to pay the Internal Revenue Service its secured claim to the extent of the value of the collateral securing its lien. Dckt. 65. The Amended Plan proposes to pay $128.00 per month for the first three months, $200.00 for the next three months, and then $328.00 per month for the remaining fifty-four months. Dckt. 64. 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 March 13, 2018. Dckt. 73. The Chapter 13 Trustee asserts that Debtor is $122.00 delinquent in plan payments, which represents less than one month plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of the Internal Revenue Service. That Motion was filed and set for hearing on March 27, 2018. The court has,

pursuant to that Motion determined that the claim of the Internal Revenue Service is an oversecured claim, Debtor having failed on that Motion to reduce said secured claim.

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.

The Chapter 13 Trustee argues that Debtor has not provided evidence that the increased plan payment is possible. Schedule J shows net income of $130.36, but the Plan calls for increases in plan payments to $200.00 and then to $328.00. There is no evidence to support those increases. Thus, the court may not approve the Plan.

The court concludes that Debtor has failed to provide credible evidence to support such a contention that Debtor has "extra" money to increase plan payments. The testimony of Debtor in their Declaration (Dckt. 65) is not credible. First, while drafted as a joint declaration, the testimony is purported to be stated by one of the debtors, much of it being stated as "I, . . ." The court cannot determine which Debtor, if either, is making the statement.

The Declaration includes non-personal knowledge testimony (FED. R. EVID. 601, 602), but Debtor (though not identified whom) merely parrots conclusions of law or parrots the Bankruptcy Code, including:

> "6. The Plan is proposed in good faith and not by any means forbidden by law."
>
> "8. All secured creditors have either accepted the Plan, or their collateral has been surrendered to them, or the Plan provides to pay them pursuant to Section 1325(a)(5)(B)." [It appears that the debtors do not know how their plan provides for payment of secured claims.]
>
> "10. The Petition was filed in good faith."

Declaration, Dckt. 65.

Debtor appears to admit that they have no actual personal knowledge as to their finances and ability to perform the Chapter 13 Plan, by stating that:

> "9. I am informed and therefore believe and declare that I will be able to make the payments called for by the Plan and comply with the Plan."

Id. Merely being informed by someone and believing, apparently because someone has told them that such "belief" is necessary to prevail in court, is not credible personal knowledge testimony.

After now more than eight years of the court clearly applying the Federal Rules of Evidence and requiring personal knowledge testimony, the court is confident if Debtor had the ability to provide such testimony in their declaration, they and their counsel would have so provided the testimony. Their failure to do so demonstrates their inability to do so.

The Chapter 13 Trustee's Opposition on these grounds is sustained as well. Debtor has failed to provide evidence of an ability to perform the Plan.

The Chapter 13 Trustee 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). The Chapter 13 Trustee states that there are several errors on Form 122C-2, which lead to a projected $45,840.00 that could be distributed to unsecured claims over the life of the Plan, but the Plan proposes a zero percent dividend. The errors include $863.00 for additional housing expenses without explanation, $299.03 for net ownership expense of a vehicle that should be $0.00, $485.00 for net ownership expense of a second vehicle that no loan is listed for on Schedule D, $4,175.90 in tax expenses that should be much lower based on an effective tax rate of 11%, $2,152.83 in payroll deductions when Schedule I shows $477.00, and $56.90 in additional food and clothing expenses without any support.

Again, the Chapter 13 Trustee has identified further failures of Debtor or defects in the Plan.

Finally, the Chapter 13 Trustee notes that the Statement of Financial Affairs is incomplete. It does not contain Debtor's total income for 2016 in Question 4, and it does not contain any business income, even though Debtor's 2016 federal tax return shows gross business income of $879.00.

Overall, Debtor is not properly providing for payment of creditors in this case. Debtor has demonstrated a lack of good faith in prosecuting this case and plan. Debtor fails to provide credible testimony, and instead provides incomplete testimony. Debtor seeks to skirt responsibility for testifying in federal court by merely throwing out contentions based on "information and belief" or by parroting the Bankruptcy Code. Debtor's purported expenses are not the actual expenses, but merely a "fiction" to achieve an apparently pre-ordained result for Debtor to keep their new vehicle and pay nothing to creditors holding general unsecured claims. No Supplemental Schedule J has been filed. No financial information and explanation is provided about how Debtor can "reduce" the prior necessary expenses stated under penalty of perjury. Merely saying, "well, since I have to increase the payment I can generally reduce expenses" does not suffice.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Patrick Seehuetter and Marguerite Seehuetter ("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.

6.	**18-20115-E-13** **DPC-1**	**DOUGLAS SCOTT** **Robert Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-21-18 [22]**

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 21, 2018. By the court's calculation, 34 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.

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

A. Douglas Scott ("Debtor") cannot afford the plan payments because he has not accounted for mortgage arrears;

B. Debtor's plan relies upon a motion to value; and

C. The Plan fails the liquidation analysis.

The Chapter 13 Trustee's objections are well-taken. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee states that Debtor admitted at the Meeting of Creditors that he owes pre-petition arrears of more than $18,000.00 to The Golden 1 Credit Union, but the Plan treats that claim in Class 4. The Additional Provisions state that a third-party will cure the delinquency in exchange for room residency rights, but that third-party has not filed a declaration indicating his ability and willingness to be bound to such terms. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Internal Revenue Service. Debtor has failed to file a Motion to Value the Secured Claim, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee 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). Debtor's non-exempt equity totals $2,402.00, but the Plan proposes a 0.00% dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of $2,402.00 in non-exempt equity.

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

7. **18-20115-E-13** **DOUGLAS SCOTT** **OBJECTION TO CONFIRMATION OF PLAN BY THE GOLDEN 1 CREDIT UNION**
EMM-1 **Robert Huckaby** **2-22-18 [26]**

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 22, 2018. By the court's calculation, 33 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 Golden 1 Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Douglas Scott's ("Debtor") Plan does not provide for pre-petition arrears owed to Creditor, and

B. Debtor does not have enough disposable income to afford plan payments.

Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $18,666.04 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the

surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that disposable income calculated from Schedules I & J is $215.00, but Debtor will need at least $311.00 to fund a plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Golden 1 Credit Union ("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 Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

8. **16-25419-E-13 DBL-4** | **ANTHONY/AMALIA AITKEN** **Bruce Dwiggins** | **CONTINUED MOTION TO MODIFY PLAN** **1-16-18 [77]**

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 January 16, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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.

Anthony Aitken and Amalia Aitken ("Debtor") seek confirmation of the Modified Plan because Debtor's income has increased. Dckt. 79. The Modified Plan proposes plan payments of $2,175.00 for months seventeen through sixty, with a 0.00% dividend to general unsecured claims. 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 February 12, 2018. Dckt. 85. He argues that Debtor has failed to state with particularity the grounds upon which the requested relief is based. He also states that the Second Modified Plan does not include a description of any additional provision of the plan that differs from the form plan.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor provides that he started a new job that provides more income but has not filed a

supplemental Schedules I and J to reflect the increase in plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Section 7.7 paragraph 2 provides for a monthly dividend of $455.00 for post-petition arrears of $4,921.34, the balance of pre-petition arrears in the amount of $13,798.00, plus two supplemental claims totaling $1,198.86. The Chapter 13 Trustee is unable to administer payment in that was, and Debtor will need to provide a specific monthly dividend for each individual claim.

Additionally, the Chapter 13 Trustee opposes how the Modified Plan does not remit any future tax refunds.

FEBRUARY 27, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on February 27, 2018, because Debtor's counsel was unavailable due to jury duty in California Superior Court. Dckt. 88.

RULING

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 Anthony Aitken and Amalia Aitken ("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.

9. **18-20119-E-13** **CHEREESE CAMACHO** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Richard Jare** **PLAN BY DAVID P. CUSICK**
2-14-18 [21]

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 14, 2018. By the court's calculation, 41 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.

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

A. Chereese Camacho's ("Debtor") Plan deviates from the standard plan in its numbering;

B. Debtor failed to file tax returns; and

C. Debtor failed to appear at the Meeting of Creditors.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee argues that he is unsure if the proposed plan is of any effect because it deviates from the court's standard plan. The Plan contains different numbering than in the standard plan. For example, instead of referencing the provision for monthly plan payments as Section 2.01, Debtor's Plan calls that paragraph "1." Each section of the proposed plan begins its paragraphs back at 1, instead of labeling them with numbers after a decimal point.

Deviating from the court's plan form is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and is a ground to sustain the Objection.

On January 25, 2018, the Internal Revenue Service filed Claim No. 1 indicating that Debtor did not file tax returns for the four-year period preceding the filing date. Specifically, Debtor has not filed the 2016 return. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor did not appear at the continued Meeting of Creditors on March 15, 2018 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 the Chapter 13 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).

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

10. **17-25221-E-13** **TOMMIE RICHARDSON** **MOTION FOR TURNOVER OF PROPERTY**
DPC-2 **Peter Macaluso** **3-6-18 [79]**

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Turnover 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 for Turnover is granted.

David Cusick, the Chapter 13 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover of foreclosure proceeds held by Attorneys Wright, Finlay & Zak, held on behalf of the foreclosure trustee, TD Service Co (which may now be known as First American Title Insurance Company), for the foreclosure of real property commonly known as 1902–1904 Filbert Street, Oakland, California ("Property").

Movant believes that up to $3,600.00 in fees for the attorneys may be allowable under 11 U.S.C. § 543(c)(2), and he requests that such fees be allowed if they file a supporting response, but if there is no response, Movant asks the court to allow a sufficient amount to be retained for compensation of the attorneys.

Movant notes that Tommie Richardson's ("Debtor") proposed plan calls for a lump sum payment in the sixtieth month from the sale of real property. *See* Dckt. 13. Movant seeks turnover of the foreclosure funds (minus allowable custodian fees), that the attorney-custodians apply within sixty days for reasonable

fees, and that the attorney-custodians turnover copies of all claims they have received for the funds, which are believed to be:

A.	$1.257.38	City of Oakland—City-wide liens
B.	$335.00	City of Oakland—Garbage section
C.	$31,277.55	Controller of the State of California
D.	$unknown	State of California—Franchise Tax Board
E.	$net proceeds	Tommie E. Richardson, Jr.
F.	$unknown	Seneca Leandro View, LLC

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver foreclosure proceeds to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this Motion by Debtor or any other party in interest.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Turnover of Property filed by David Cusick, the Chapter 13 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Turnover of Property is granted, and the Wright, Finlay & Zak law firm, and its attorneys ("Custodian"), shall deliver on or before April 10, 2018, possession of the foreclosure proceeds from the foreclosure sale of the real property commonly known as 1902–1904 Filbert Street, Oakland, California ("Property"), copies of claims received for secured debts or other obligations paid from the sales proceeds, and an accounting of the distributions of the sales proceeds to all other persons.
>
> **IT IS FURTHER ORDERED** that Custodian may retain from the sales proceeds an amount not to exceed $3,600.00, to the extent that it has a right to be paid such amounts for fees and costs, and account to the Chapter 13 Trustee for such monies retained.

11. 17-25221-E-13 TOMMIE RICHARDSON
PGM-1 Peter Macaluso

CONTINUED MOTION TO CONFIRM PLAN
11-14-17 [32]

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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.

Tommie Richardson ("Debtor") seeks confirmation of the Amended Plan because a property was being foreclosed upon. Dckt. 35. The Amended Plan proposes payments of $600.00 for sixty months with a 100.00% dividend to unsecured claims and a lump sum payment in month sixty from the "sale of real property, adversary, or over-bid from foreclosure of real property." Dckt. 34. 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 December 18, 2017. Dckt. 38. The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Additionally, Debtor admitted at the Meeting of Creditors that the federal income tax returns for the prior four tax years have not been filed. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). In the Chapter 13 Trustee's prior Objection to Confirmation (Dckt. 21), the Chapter 13 Trustee noted that Debtor's pleadings are not consistent about whether he receives pension funds, how much he receives, how long he has been receiving them, what his wife earns in wages, and whether he has received rental income. An accounting of Debtor's funds has not been provided yet. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's fees may not be reported accurately in this case. Prior documents, such as the Rights and Responsibilities, indicate that Debtor paid $500.00 before filing and that $4,000.00 is owed. Now, Debtor reports that $500.00 was paid and that $3,000.00 is owed.

The Chapter 13 Trustee is also concerned about the accuracy of documents about Debtor's real property. While the Chapter 13 Trustee is not concerned about the plan itself (because it proposes a 100.00% dividend), he is concerned that Debtor's interest in real property has not been made fully clear. The Chapter 13 Trustee objected previously on this ground because there was no information about when the property was purchased, how much was paid for the property, and whether Debtor and his non-filing spouse were married at the time. Debtor has not addressed those concerns although raised previously.

Also previously, the Chapter 13 Trustee noted that all debts may not be listed because the Chapter 13 Trustee received a letter dated June 26, 2017, about a "Cal State 9 Credit Union" loan and checking account. The Chapter 13 Trustee was not able to find anything that matched, however. He provided a copy of the letter to Debtor, who has not provided any additional information.

DEBTOR'S REPLY

Debtor filed a Reply on January 2, 2018. Dckt. 42. Debtor promises to file, serve, and set for hearing a new amended plan.

JANUARY 9, 2018 HEARING

At the January 9, 2018 hearing, the court granted a continuance for the Motion to Confirm the Amended Plan to be heard on January 30, 2018 at 3:00 p.m. Dckt. 50. This continuance was set to allow the Debtor to make the required lump sum payment.

DEBTOR'S SUPPLEMENTAL RESPONSE

Debtor filed a Supplemental Response on January 30, 2018. Dckt. 62. Debtor states that on January 3, 2018 and January 17, 2018, the office of Wright, Finlay, & Zak, representing the foreclosure trustee, in order to collect the proceeds from the foreclosure sale of Debtor's property, located at 1902-1904 Filbert Street, Oakland, California. Debtor intends to use the excess proceeds to pay the Plan at one-hundred percent.

JANUARY 30, 2018 HEARING

At the January 30, 2018 hearing, the court continued the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on March 6, 2018. Dckt. 64.

MARCH 6, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 27, 2018, pursuant to a prior order continuing the hearing. Dckt. 78, 84.

RULING

No further pleadings have been filed since the March 6, 2018 hearing to address the flaws identified by the court.

Debtor's position suffers from several major failings. First, Debtor wants to file an amended plan, but then he asks in the Reply for the court to confirm the current plan. Dckt. 42. More significantly, the proposed plan manifests bad faith (not merely a lack of good faith) by Debtor. Under the Plan before the court (Dckt. 34), at some time in the next five years, when Debtor decides when it is in his best interests (without regard to his duties under the Bankruptcy Code), he may sell the real property and pay creditors. The only creditor being paid will be Wells Fargo Bank, N.A., for Debtor's 2014 Jaguar and Debtor's counsel. Though this case was filed in August 2017, Debtor has not even filed a motion to employ a real estate broker to sell the real property.

The lump sum payment to be made sometime during the sixty months of the Plan is stated to be made from "sale of real property, adversary, or over-bid from foreclosure of real property. Plan ¶ 1.02, Dckt. 34. No adversary proceedings have been filed by Debtor.

On Schedule A/B, Debtor lists the Oakland property as having a value of $1,000,000. Dckt. 13 at 3. On Schedule D, Debtor states that the Oakland property is encumbered by liens to secure the following claims: (1) Caliber Home Loans in the amount of ($333,006). *Id.* at 12. Thus, it would appear that the bankruptcy estate has $650,000 of recoverable equity in the Oakland Property.

However, on the Statement of Financial Affairs, Debtor states that a foreclosure of the $1,000,000 Oakland Property occurred on July 17, 2017. Statement of Financial Affairs Question 10, Dckt. 13. The present bankruptcy case was filed on August 8, 2017, one month later.

There is no adversary proceeding to vacate the foreclosure or any action being made to recover the $1,000,000 asset.

On Schedule A/B, Debtor lists a second property, the Graeton Circle, Mather, California Property. *Id.* at 4. Debtor states that he is not on title, but that this is community property. Though community property, Debtor states that his interest has a value of only $1.00. *Id.* Schedule A/B also provides the following information about the Mather Property: "FMV $300,000 - Secured Claim of $392K." *Id.* With that information, there is no value for creditors in this case.

As further stated by the Chapter 13 Trustee, Debtor has provided conflicting, inconsistent statements under penalty of perjury as to his income. *See* Chapter 13 Trustee's Opposition, Dckt. 38 at 2:5.5–18. The Chapter 13 Trustee provides evidence that Debtor had rental income through April 2017, but such information was not disclosed on the Statement of Financial Affairs. *Id.* at 2:13–22.5.

In denying confirmation of the prior Plan, the court addressed some of Debtor's financial contentions. Civil Minutes, Dckt. 27. The court discussed Debtor's failure to provide for litigation to try to reverse the foreclosure sale in the prior Plan. The court's comments in connection with the prior Plan were pointed and direct:

> The conduct of Debtor shows a pattern of intentional misrepresentation and misstatement under penalty of perjury. Given that Debtor is represented by counsel, it appears clear that he knew of his obligations to be truthful and accurate and either intentionally hid such assets from his attorney, or the scheme to hide the assets is broader than merely Debtor.

Id. at 4. The current Plan does not provide for any more specific terms for a plan or demonstrate any action being taken by, or even to be taken by, Debtor.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Tommie 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 to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

12. **18-20143-E-13** **LAURO/DANELLE AVILA** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Steele Lanphier** **2-14-18 [16]**

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 14, 2018. By the court's calculation, 41 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.

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

A. Lauro Avila and Danelle Avila's ("Debtor") Plan fails the liquidation analysis;

B. The Plan relies on an unfiled motion to value; and

C. Debtor has not proposed all disposable income into the Plan.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee 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). The Chapter 13 Trustee states that there is $34,733.67 in non-exempt equity, but Debtor's Plan proposes a 0.00% dividend to unsecured claims. Debtor has not explained how that is an appropriate treatment.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Gateway One and TitleMax. Debtor has failed to file a Motion to Value the Secured Claim, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee also alleges that the proposed Chapter 13 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.

The Chapter 13 Trustee argues that not all disposable income has been proposed to fund the Plan because Debtor reports on Schedule B receiving $8,000.00 in tax refunds, but that income is not reported on Schedule I. At the Meeting of Creditors, Debtor allegedly agreed to amend the Plan to provide all tax refunds in excess of $2,000.00 per year for the duration of the Plan.

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

13. 18-20243-E-13 DPC-1 | **JOHN HATZIS** Mikalah Liviakis | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-21-18 [22]**

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 21, 2018. By the court's calculation, 34 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.

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

A. John Hatzis ("Debtor") has not proposed all disposable income into the Plan;

B. The Plan fails the liquidation analysis; and

C. There are conflicting disclosures about attorney's fees.

The Chapter 13 Trustee's objections are well-taken. 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.

The Plan proposes a 12% dividend to unsecured claims for $23,380.00, but the Chapter 13 Trustee argues that Form 122C-2 was calculated incorrectly. While Line 45 shows negative disposable income of ($307.37), the Chapter 13 Trustee argues that disposable income should be $1,005.00 for sixty months. He calculates disposable income based upon the following changes:

A. Line 16 Taxes: Debtor deducted $2,584.00, but Schedule I shows $1,700.00, which is a difference of $884.00;

B. Line 23 Optional Phone Service: Debtor deducted $250.00, but the Chapter 13 Trustee does not believe that Debtor's expenses for pagers, call waiting, caller identification, long distance, or business cell phones is that high;

C. Line 25 Health Insurance: Debtor deducted $266.00, but Schedule I shows $158.00, which is a difference of $108.00; and

D. Line 43 Special Circumstances: Debtor deducted $170.00 for additional trustee fees, but the Chapter 13 Trustee's fees have already been deducted on Line 36.

Additionally, Debtor reported receiving a total tax refund of $9,988.00 in 2016, but he has not proposed paying any of those funds into the Plan.

The Chapter 13 Trustee 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). Debtor appears to have at least $70,191.00 in non-exempt equity from a house, tax refunds, a lawsuit, and a personal injury claim, but he proposes to pay only $23,380.08 as a 12% dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a twelve percent dividend when there may be upward of $70,191.00 in non-exempt equity.

Finally, the Plan states that Debtor paid $1,000.00 in attorney's fees before filing, but the Rights and Responsibilities state that $1,500.00 was paid. The Chapter 13 Trustee is unaware what amount has been paid and what is left to be paid through the Plan.

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

14. 14-25474-E-13 LBG-3 | **LEE SCIOCCHETTI** | **Lucas Garcia** | **MOTION TO SELL** | **3-1-18 [73]**

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, and Office of the United States Trustee on March 1, 2018. By the court's calculation, 26 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Lee Sciocchetti, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell an easement (right of way) in the real property commonly known as 7986 Highway 20, Smartsville, California ("Property"). Movant has a 40% joint tenancy interest in the Property.

The proposed purchaser of the Property is California Department of Transportation, and the terms of the sale are:

A. Purchase price of $56,300.00; and

B. Net 40% proceeds to Movant and Kelli Beard of $22,520.00.

INSUFFICIENT NOTICE OF MOTION

Movant provided twenty-six days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided nine fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

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

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE OF THE MOTION

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 12, 2018. Dckt. 78. The Chapter 13 Trustee does not oppose the proposed sale, and he notes that Debtor is current with plan payments.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because net Movant $11,046.97 for his joint tenancy 40% interest in the Property. Movant has argued that he claimed an exemption of $56,000.00 in the Property already and that he can claim up to $75,000.00. Movant appears to indicate that he will amend Schedule C so that all of the proceeds he receives remain exempt.

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

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

The Motion to Sell Property filed by Lee Sciocchetti ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Lee Sciocchetti, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to California Department of Transportation or nominee ("Buyer"), an easement (right of way) in the Property commonly known as 7986 Highway 20, Smartsville, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $56,300.00, on the terms and conditions set forth in the Sale Agreement, Exhibit A, Dckt. 76, and as further provided in this Order.

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

C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

15. **17-28284-E-13** **RICARDO SANCHEZ** **CONTINUED MOTION TO AVOID LIEN**
TLA-1 **Thomas Amberg** **OF MARINA MARR**
1-9-18 [15]

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, Creditor, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court's calculation, 14 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 Marina Marr ("Creditor") against property of Ricardo Sanchez ("Debtor") commonly known as 1648 Quail Road, West Sacramento, California ("Property").

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 12, 2018. Dckt. 23. The Chapter 13 Trustee notes that Creditor is included in Class 2(C) of the Plan with a claim to be reduced to $0.00, and he notes that Creditor has not filed a proof of claim in this case.

JANUARY 23, 2018 HEARING

At the hearing, the parties requested a continuance to conduct the first Meeting of Creditors and to address other issues in this case. Dckt. 26. The court continued the hearing to 3:00 p.m. on March 27, 2018. Dckt. 27.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $6,425.39. FN.1. An abstract of judgment was recorded with Yolo County on March 28, 2017, that encumbers the Property.

FN.1. The Motion and Schedule D list Creditor's judicial lien as being in the amount of $2,800.00, but the attached judicial lien is for $6,425.39. *Compare* Dckt. 10 (Schedule D) *and* Dckt. 15 (Motion), *with* Exhibit D, Dckt. 19 (Judicial Lien).

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $497,000.00 as of the petition date. The unavoidable consensual liens that total $425,560.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of $100,000.00 on Schedule C.

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 Ricardo Sanchez ("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 Marina Marr, California Superior Court for Yolo County Case No. CV-G-15-781, recorded on March 28, 2017, Document No. 2017-0007517-00, with the Yolo County Recorder, against the real property commonly known as 1648 Quail Road, West Sacramento, 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.

16. **15-22489-E-13** **JACK DUMIN** **MOTION TO VALUE COLLATERAL OF BROWN SANDS TRUST**
RJ-7 **Richard Jare** **3-13-18 [76]**

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, Creditor, and Office of the United States Trustee on March 13, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Brown Sands Trust c/o Real Time Resolutions ("Creditor") is granted, with the court confirming that claim has been valued at $0.00.

The Motion to Value filed by Jack Dumin ("Debtor") to value the secured claim of Brown Sands Trust c/o Real Time Resolutions ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2893 Candido Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $155,700.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on March 19, 2018. Dckt. 80. He notes that Debtor already received an order valuing the secured claim at $0.00 when the creditor was

identified as Clearspring Loan Services, Inc. After that, he notes that a transfer of claim was filed for the current Creditor.

DISCUSSION

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

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

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

The court has already valued the Property at $155,700.00 and Claim No. 4-1 at $0.00. *See* Civil Minutes, Dckt. 57. After that hearing, the claim was transferred to Creditor. Dckt. 70. Nevertheless, the Property and the claim are valued still. There is no argument for the court to issue a redundant order confirming that its prior order means what it says it means.

The court issued an order on August 17, 2015, valuing the Property at $155,700.00 and Creditor's predecessor's claim at $0.00. That order binds the subsequent transferee creditor. The Motion is granted based on the prior order to provide Debtor with a recordable order that ties to the creditor now holding the claim.

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 Collateral and Secured Claim of Brown Sands Trust c/o Real Time Resolutions filed by Jack Dumin ("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, the court providing this as a Supplemental Order to the prior order of the court filed on August 17, 2015, determining this secured claim, when previously held by Clearspring Loan Services, has a value of $0.00 pursuant to 11 U.S.C. § 506(a).

IT IS FURTHER ORDERED that the Motion pursuant to 11 U.S.C. 506(a) is granted, and the claim of Brown Sands Trust c/o Real Time Resolutions secured by a second in priority deed of trust recorded against the real property commonly known as 2893 Candido Dr., Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $155,700.00 and is encumbered by senior liens securing claims in the amount of $177,547.00, which exceed the value of the Property that is subject to Creditor's lien.

17. 18-20290-E-13 LUIS MANZO
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-21-18 [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, Debtor's Attorney, and parties requesting special notice on February 21, 2018. By the court's calculation, 34 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.

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

A. Luis Manzo ("Debtor") fails the liquidation analysis;

B. Debtor has not provided all pay advices;

C. Debtor has not proposed all disposable income; and

D. Debtor did not list any income on Form 122C-1.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee 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). The Chapter 13 Trustee states that there are five properties that were transferred, but in which Debtor shows no interest even though he admitted at the Meeting of Creditors that he was on

title to some of the properties when purchased. As addressed in the minutes for creditor Esteban Cardiel's Objection to Confirmation, there were five properties transmuted into community property by Debtor's spouse in 2016 that total as much as $440,000.00 in value, but Debtor claims they have no value for this case. Debtor does not explain why unsecured claims are entitled to a 0.00% dividend when there may be as much as $440,000.00 in unreported equity in this case. The Plan fails the liquidation analysis. 11 U.S.C. § 1325(a)(4).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); 11 U.S.C. § 1325(a)(1).

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.

The Chapter 13 Trustee presents several grounds for why Debtor's plan is not his best effort. Debtor has not listed an expense for income taxes, he is claiming expenses for a pre-petition deceased parent, he does not pay the $1,000.00 he listed on Schedule J, and he has not disclosed the life insurance policy he claims he pays.

Finally, Debtor does not list any income on Form 122C-1, despite showing wages and commission on Schedule I.

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

18. 18-20290-E-13 LUIS MANZO
FWP-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY ESTEBAN CARDIEL
2-22-18 [36]

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, and Chapter 13 Trustee on February 22, 2018. By the court's calculation, 33 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.

Esteban Cardiel ("Creditor") holding an unsecured claim opposes confirmation of the Plan on the basis that Luis Manzo ("Debtor") has not included his community property interest in five properties, causing him to fail the liquidation analysis.

Creditor argues that Debtor's spouse, Elizabeth Manzo, filed a Chapter13 bankruptcy case on November 22, 2017. Case No. 17-27692. Creditor argues that the Statement of Financial Affairs in that case shows that Elizabeth Manzo transferred five properties into a living trust in 2016. Case No. 17-27692, Dckt. 9 at 31. According to the grant deeds for those properties, they were each transmuted "into community property shared between Elizabeth Manzo and Luis Manzo (Husband) and Veronica Elizabeth Manzo (Daughter)." Exhibits A–E, Dckt. 39.

The addresses and values for each of those properties, as pleaded in Elizabeth Manzo's case, are:

A. 5046 Willow Vale Way, Elk Grove, California ($275,000.00);

B. 8965 Grantline Road, Elk Grove, California ($140,000.00);

C. 7321 Elefa Avenue, Elk Grove, California ($45,000.00);

D. 470 F Street, Galt, California ($85,000.00); and

E. 1319 Lord Street, Walnut Grove, California ($25,000.00). FN.1.

Case No. 17-27692, Dckt. 9.

FN.1. The court notes that the Objection and Elizabeth Manzo's Statement of Financial Affairs list the street address as 1319 for the Lord Street property, but Schedule A/B lists 1316 as the number.

The total value of those properties is $440,000.00 as pleaded by Debtor's spouse. All of the properties are listed in this case, but Debtor asserts that each of them has a value of $0.00 for him because they are all in his wife's name. Nevertheless, he the grant deeds for the trust name him as a beneficiary.

There may be as much as $440,000.00 in additional equity for this case. Debtor has not explained why unsecured claims are entitled to a 0.00% dividend with so much possible additional equity. The Plan fails the liquidation analysis. 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.
>
> The Objection to the Chapter 13 Plan filed by Esteban Cardiel ("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 Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

19. 17-27271-E-13 ELIAS BONILLA
ULC-1 John Sargetis

OBJECTION TO CLAIM OF HSBC BANK USA, N.A., CLAIM NUMBER 1
2-13-18 [36]

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 13, 2018. By the court's calculation, 42 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1-1 of HSBC Bank USA, N.A. as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9, is overruled without prejudice.

Elias Bonilla, Jr., Chapter 13 Debtor ("Objector") requests that the court disallow the claim of HSBC Bank USA, N.A. as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9, ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $383,928.23.

Objector asserts that he made trial loan modification payments in anticipation of a permanent loan modification but that Creditor never provided one. Objector argues that a permanent loan modification would have included arrears of $14,780.00, not $131,730.98 as listed in the Claim.

INSUFFICIENT NOTICE OF OBJECTION

Objector provided forty-two days' notice of this Objection. Federal Rule of Bankruptcy Procedure 3007(a) requires a minimum of thirty days' notice of the hearing, and Local Bankruptcy Rule 3007-1(b)(1) requires an additional fourteen days for parties to file written opposition. Those time periods

do not run concurrently. Those two minimums total forty-four days. Objector has provided two fewer days than the minimum.

CREDITOR'S RESPONSE

Creditor filed a Response on March 13, 2018. Dckt. 41. Creditor argues first that the Objection should be overruled because of the short notice. That has been addressed by the court.

Second, Creditor argues that Objector has failed to present any evidence that invalidates the *prima facie* validity of its claim. Creditor argues that Objector has not presented a final modification agreement that called for capitalizing arrears. Further, Creditor argues that Objector only presenting the Trial Period Plan Letter, and not the executed HAMP Agreement, is strategically misleading because the HAMP Agreement would be evidence that Objector failed "to complete the necessary requirements for acceptance that resulted in a permanent loan modification not being entered into between the parties." *Id.* at 5:21–22.

Creditor argues that it never received a fully executed copy of required documents for the HAMP Agreement. Creditor argues that the documents it received were executed five months after the deadline and did not contain a necessary signature from a co-borrower. *Id.* at 6:3–5.

Creditor argues that the co-borrower's signature is necessary because she would be personally liable on the loan.

Creditor also argues that not providing the HAMP Agreement violates the Statute of Frauds.

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).

Here, Objector has provided a copy of the trial loan offer letter that contains the standard language sent out, by Nationstar Mortgage in this instance. Exhibit A, Dckt. 39. That letter contains language designed to encourage the recipient into making trial payments with an eye toward receiving a permanent loan modification. The letter states that a recipient can qualify for a permanent modification by making the three trial period payments. *Id.*

However, the letter also contains less-exciting language that may read as boilerplate to a layperson that states that a recipient must make all three trial payments and must timely submit all required documents. For this Objection, the parties do not dispute whether Objector made the three required trial payments. The parties agree that he did.

The parties disagree about the effect of making those three payments, though. Objector asserts that making those payments alone is enough to trigger a permanent loan modification. Creditor argues that making the payments was a preliminary step to be followed to by completing additional documents, namely the HAMP Agreement.

Creditor provided copies of the required HAMP documents, and the court's review of them, shows that the proposed modification document names both Objector and Dorothy Bonilla. *See* Exhibit 5, Dckt. 42 at 57, 62. Creditor argues that Dorothy Bonilla's signature on the agreement was necessary because she would personally liable on the loan, and the attached agreement clearly shows that only Objector signed the agreement on June 6, 2017. *Id.* at 62. The signature line for Dorothy Bonilla is blank. *Id.*

This Objection is not presented as one involving a complex analysis of law. Instead, the analysis revolves around facts. Objector is upset that Creditor filed the Claim for the full amount of arrears instead of for the anticipated lesser amount that would have been part of the loan modification; Creditor asserts that it is entitled to the full amount because the loan modification process was not completed.

The court begins with Exhibit A, Dckt. 39, the Nationstar Mortgage letter extending the "offer" for a loan modification instead of a foreclosure. The significant terms to the dispute before the court include the following:

> "Congratulations! Your client has been **approved to enter into a trial period plan** under the Streamline Home Affordable Modification Program ("HAMP"). This is the first step toward qualifying for more affordable mortgage payments. Please read this letter and the attachments so that you and your client **understand the steps needed to successfully complete the trial period plan** and **permanently modify the mortgage payments.**
>
> *What You Need to Do Now...*
>
> To accept this offer, your client must make the first monthly "trial period payment" by the date shown below. To qualify for a permanent modification, your client must make the following trial period payments in a timely manner:
>
> [three payment amount and dates stated]
> . . .
>
> **After your client makes all trial period payments** in a timely manner and **submits all required documents**, the mortgage will be permanently modified as described herein. (The existing loan and loan requirements remain in effect and unchanged during the trial period). If each trial period payment is not received by Nationstar Mortgage LLC in the month in which it is due, the loan will not be modified under the terms described in this offer.
> . . .

> Q. When will I know if my loan can be modified permanently and how will the modified loan balance
> be determined?
>
> **Once your client makes all of the trial period payments on time**, we will send (i) a Streamline HAMP
> Affidavit and (ii) two copies of a modification agreement detailing the terms of the modified loan. Your client will be required to sign and return to us both the Streamline HAMP Affidavit and two copies of the
> modification agreement by the date specified in the letter accompanying such documents. Once we have signed the modification agreement, and **provided your client has remained eligible for the modification**, the mortgage will be permanently modified in accordance with the terms of the modification agreement.
> . . .
>
> Q. What is the Streamline HAMP Affidavit?
>
> The Streamline HAMP Affidavit includes various statements, representations and certifications that each borrower and co-borrower must make in order to receive a mortgage modification under Streamline HAMP. Your client will be required to certify, among other things, that: . . . [factional, non-discretionary certification]"

Id. (emphasis added).

Creditor's Opposition

Creditor's opposition is that Debtor has not completed the process and therefore is not entitled to a loan modification.

> "6. On November 21, 2017, Creditor sent the Debtor and Co-Borrower two copies of a proposed permanent HAMP Agreement and Steamline HAMP Affidavit ('HAMP Affidavit'). A copy of the HAMP Package sent to the borrowers is attached to the Exhibits as Exhibit 4; See also Declaration ¶ 11. **The HAMP Package stated clearly that in order to accept the offer, both copies of the HAMP Agreement and the HAMP Affidavit must be signed and returned by December 18, 2016**.
>
> 7. **On or about June 6, 2017, the Debtor executed the HAMP Agreement and HAMP Affidavit.** However, the Co-Borrower's signature was missing from the documents executed by the Debtor. A copy of the partial executed HAMP Agreement and HAMP Affidavit has been attached to the Exhibits as Exhibit 5. **No permanent loan modification was entered because all of the required steps to finalize the modification were not taken by the Borrowers**. See Declaration ¶ 12."

Id. (emphasis added).

Debtor's Declaration (Dckt. 38) only asserts that the trial loan modification payments were made, not that the HAMP Agreement was completed.

The court overrules the Objection without prejudice. Not adequate notice was given. As addressed below, if Creditor and Debtor cannot reasonably and rationally conclude that notwithstanding how events have transpired that the loan modification should be completed, the issue can be presented to the court in a proceeding consistent with that seeking mandatory injunctive relief or for reformation of the underlying contract.

Injunctive Relief, Reformation of Contract

In some respects, it appears that Debtor's real argument is that it is entitled to a loan modification and that Creditor should be ordered to complete the loan modification and the related documentation. This is indicated in the following allegations in the Objection:

> "2. The objection is on the grounds the claimed default as of the date of the petition in the amount of $131,730.98 is incorrect due to an enforceable agreement entered into between the Debtor and Creditor as set forth in Exhibit A which results in a secured arrears claim in the amount of $14,780.00 only.
>
> 3. Pursuant to Exhibit A, Debtor and Creditor entered into a Streamline Home affordable Modification Program (HAMP) with Nationstar Mortgage requiring payments of $1,672.95 due for months September 1, 2016, October, 1 2016 and November 1, 2016 (See Exhibit A) which if timely made as stated therein '…the mortgage will be permanently modified…'
> . . .
>
> 5. Thereafter Creditor breached the agreement described in Exhibit A by refusing to issue a permanent modification by which the secured arrears claim would have consisted of $14,780.00 or as according to proof.

Objection to Claim, Dckt. 36.

Requesting relief in the form of ordering someone to complete a transaction is in the nature of a mandatory injunction, not a mere objection to claim. The underlying contract not only has to be reformed, but the parties must complete their respective parts of the transaction. If Debtor truly believes that there is an enforceable contract to modify the existing loan, such mandatory injunctive relief must be sought through an adversary proceeding. FED. R. BANKR. P. 7001(7).

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 HSBC Bank USA, N.A. as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9 ("Creditor"), filed in this case by Elias Bonilla, Jr., ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of HSBC Bank USA, N.A. as Trustee for GSAA Home Equity Trust 2005-9, Asset-Backed Certificates, Series 2005-9, is overruled without prejudice.

20. 18-21418-E-13 SDH-1 | **VELMA WALL** **Scott Hughes** | **MOTION TO IMPOSE AUTOMATIC STAY AND/OR MOTION TO EXTEND AUTOMATIC STAY** **3-13-18 [8]**

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.

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 13, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Impose the Automatic Stay 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 Impose the Automatic Stay is xxxxxxxxxxxxxx.

Velma Wall ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 15-28553 and 17-23131) were dismissed on April 12, 2017, and February 25, 2018, respectively. *See* Order, Bankr. E.D. Cal. No. 15-28553, Dckt. 51, April 12, 2017; Order, Bankr. E.D. Cal. No. 17-23131, Dckt. 58, February 25, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because she fell behind on plan payments after having medical issues that put her in the hospital a couple of times during the last year. Dckt. 10. She also states that her income is irregular because currently there are thirteen tenants living at her residence, and people move in and out. *Id.*

Debtor pleads that the current case will work because she has decided to sell the residence and not deal with tenants anymore and because she now receives IHSS income for caring for three disabled sons. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 16, 2018. Dckt. 14. The Chapter 13 Trustee is not certain that there has been a favorable change in Debtor's circumstances. He notes that her household size has increased from four to twelve persons since the prior case. *Compare* Case No. 17-23131, Dckt. 1 at 35, *with* Case No. 18-21418, Dckt. 1 at 44. He also notes that her income from IHSS is $5,162.00 and from Social Security is $3,064.00—which are the same amounts as in the prior case. The increase in this case is from projected rents of $2,000.00, which is a $1,200.00 increase. The Chapter 13 Trustee notes that the proposed plan calls for sale or surrender of Debtor's residence within one year.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Debtor's prior cases were dismissed after Debtor failed to make plan payments (No. 15-28553 & 17-23131). Debtor has testified that over the last year she was hospitalized a couple of times that caused her additional expenses that affected her ability to make plan payments. Dckt. 10. Debtor's Declaration also indicates that a main source of her difficulties has been in managing tenants at her residence. She proposes to overcome those obstacles now by selling the residence.

Review of Debtor's Schedules

On Schedule A/B (Dckt. 1 at 11–15), Debtor states under penalty of perjury having the following assets and values:

A.	Personal Residence	$510,000
B.	2009 Vehicle, 170,000 miles	$ 2,300
C.	Household Goods and Furnishings	$ 2,500
D.	Clothing	$ 450
E.	Credit Union Account	$ 500

On Schedule D, Debtor lists Pennymac as having two claims secured by her real property. The claim secured by the two liens is stated to be $465,903. *Id.* at 18. Debtor also lists pre-petition secured homeowners association fees of $1,540.00 that are a claim in this case. *Id.*

Moving to Schedule I, Debtor states that her occupation is "IHSS Caregiver," with monthly gross wages of $5,162.00. *Id.* at 30. Debtor also lists ($1,300) in estimated income taxes and additional net income of $2,000.00 from rent/business, $3,084.00 in Social Security, and $585.61 in pension in come. *Id.* at 31. Debtor states having monthly gross income of $10,861.00, for which she states that her income taxes (federal and state) are only $1,300.00 per month.

On Schedule J (*Id.* at 32–33), Debtor states that her household consists of five persons, Debtor and four disabled adult sons. Excluding any mortgage payments, property taxes, or insurance, Debtor states that her necessary and reasonable expenses consist of:

A.	Home Maintenance	($ 300)
B.	Electricity, Heat, Gas	($ 551)
C.	Water, Sewer, Garbage	($ 102)
D.	Cable	($ 252)
E.	Telephones, Internet, Garbage	($ 248)
F.	Food and Housekeeping Supplies	($1,435)
G.	Clothing, Cleaning, Laundry	($ 300)
F.	Personal Care Products	($ 150)
G.	Medical and Dental Expenses	($ 400)
H.	Transportation	($ 500)
I.	Entertainment	($ 300)
J.	Health Insurance	($ 163)
K.	Vehicle Insurance	($ 380)
L.	Special Needs Expenses	($ 700)

Debtor totals these expenses to be ($5,781.00), leaving her with net monthly income of $3,750.00.

Conflicting with Schedule I stating that Debtor has at least $130,332 in monthly gross income on her Statement of Financial Affairs, Debtor states that in 2017 her gross income from all sources was only $30,756, and for 2016, her gross income was only $17,147.00. *Id.* at 35–36.

In Debtor's prior two cases, she was represented by the same counsel as in this case. In Case No. 17-23131 ("Second Case"), Debtor stated under penalty of perjury on Schedule I that her gross income was $9,661.61 per month. 17-23131; Schedule I, Dckt. 1 at 29. On her Statement of Financial Affairs in the Second Case, Debtor stated that she had $19,842 in gross income for the first four months of 2017. *Id.* at 37–38. That averages only $4,960 per month in gross income.

In the current case, Debtor states that her total gross income for 2017 was only $30,756, which means that Debtor had income of only $10,106 for the last eight months of 2017.

In the Second Case, Debtor states that her income for 2016 was $36,589. *Id.* That conflicts with her current statement under penalty of perjury on her Statement of Financial Affairs that she had only $17,147 in gross income in 2016.

Review of Debtor's Plan

Debtor has filed a Chapter 13 Plan in this case. Dckt. 5. Under the terms of the Plan, Debtor will make $3,700.00 per month plan payments to the Chapter 13 Trustee. That matches up to what Debtor now states her net income is each month on Schedule J. The Plan term is sixty months. The Additional Provisions state that the $3,700 per month payments will only be for twelve months, or until Debtor sells her residence. Once the property sells, the plan payments will decrease to only $100.00 per month.

For the Pennymac secured claim, Debtor is to make a $3,503.51 post-petition current monthly payment and then an $800.00 arrearage payment. However, for the first three months of the Plan, the arrearage payment will not be made, it be subordinated to payment of the unsecured administrative expense of Debtor's counsel's attorney's fees. Plan, Additional Provisions, *Id.* at 7. The Plan then provides for paying a 10% dividend for creditors holding $24,301.33 in general unsecured claims.

With $3,750.00 per month in projected disposable income as computed by Debtor on Schedule J, the court cannot understand how there will be only a 10% dividend to creditors holding general unsecured claims.

Decision

In her Declaration, Debtor states that there are thirteen people living in her residence. Though appearing to operate a boarding house, Debtor has no expenses for such commercial operation. Debtor appears to have no liability insurance to protect herself and her boarders. Debtor further testifies that she has discovered that the house needs repairs, including the fixing of broken water pipes. Debtor provides no testimony of what such repairs would cost or the other expenses of operating a boarding house.

If one assumes that Debtor's house has a value of $510,000, and the court uses the secured claims as listed on Schedule D, a projection of the value derived for the bankruptcy estate could be computed as follows:

FMV.....$510,000
Costs of Sale (est. 8%).....($ 40,800)

Pennymac Claims.....($455,903)
HOA Claims.....($ 1,540)

Net Sales Proceeds.....$11,757

However, from the $11,757 in possible net sales proceeds, all of the repair costs must be deducted, as well as other repairs and escrow contingencies. Effectively, Debtor is only serving as the forced sales agent of the creditors with secured claims—if Debtor actually tries to sell the property.

This bankruptcy case was filed on March 12, 2018. Though two weeks have passed and though Debtor could get this motion on file, Debtor has not sought to employ a real estate broker to sell the property. Given that the spring and summer months are perceived better times to market residential property, a debtor seeking to incorporate a sale in a plan would already have a broker employed and working on a sale strategy.

Based on the present Motion, the information under penalty of perjury in the Schedules and Statement of Financial Affairs, the conflicting information under penalty of perjury in the First and Second cases, and the Plan in this case, the court cannot find that Debtor has rebutted the presumption of bad faith.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

The Motion is ~~xxxxx, and the automatic stay is imposed for all purposes and parties, unless terminated by operation of law or further order of this court~~.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by Velma Wall ("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 ~~xxxxxxxx, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court~~.

21. **16-26966-E-13** **JENNIFER RIANDA** **MOTION TO RECONSIDER DISMISSAL**
DPC-4 **Lucas Garcia** **OF CASE**
1-31-18 [94]

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 January 31, 2018. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Vacate has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Vacate is denied.

Jennifer Rianda ("Debtor") filed the instant case on October 19, 2016. Dckt. 1. A plan was confirmed on March 27, 2017, and an order confirming the plan was entered on April 10, 2017. Dckt. 74, 75.

On December 15, 2017, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to delinquency in plan payments. Dckt. 82. On January 17, 2018, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 90, 91.

On January 31, 2018, Debtor filed this instant Motion to Vacate, claiming that her allegation that funds were on the way from Solano County was correct and that she can show bank records for a deposit of $61,133.00. Debtor also argues that an attached exhibit bank record shows a withdrawal of $25,000.00 intended to compensate a non-filing spouse and to cure the arrears owed in this case.

Debtor seeks to have the order dismissing the case vacated, which would be pursuant to Federal Rule of Civil Procedure 60(b), even though Debtor has not cited any applicable rule for the court.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on February 5, 2018. Dckt. 99. He argues that Debtor has not cited a legal basis for the Motion as required by the Local Bankruptcy Rules, meaning that the Chapter 13 Trustee is uncertain whether the Motion was filed pursuant to Federal Rule of Bankruptcy Procedure 9023 or 9024. Under either rule, the Chapter 13 Trustee asserts that Debtor has not shown adequate cause for relief because Debtor fails to explain why a declaration was not filed with Debtor's Reply to the Motion to Dismiss.

The Chapter 13 Trustee also questions the sufficiency of the exhibit that Debtor attached for this Motion. He argues that the alleged "Excerpt of Bank Record" is insufficient because it does not list a bank name, an account number, or any input field (e.g., deposit, credit, and balance). He also notes that Schedule A/B lists one checking account and one savings account, but without any account numbers. *See* Dckt. 10. He raises that point because Debtor's exhibit does not show what account is involved or what balance exists.

The Chapter 13 Trustee argues that $25,000.00 is not enough to cure the delinquency in this case. At the time the case was dismissed, the delinquency was $23,667.75, but now it would stand at $46,134.85.

Finally, the Chapter 13 Trustee notes that Debtor should be familiar with bankruptcy rules and procedures because this is the fourth case between her and her spouse. *See* Case Nos. 12-38387, 13-35555, 14-31728, 15-22909.

APPLICABLE LAW

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

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

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

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

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

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Debtor replied to the Motion to Dismiss asking for sixty days to become current or to propose a modified plan. Dckt. 86. Debtor argued that her business had a slow quarter and that she was working to catch up plan payments. It is significant that the asserted "facts" of slow business are mere arguments by counsel, unsupported by any evidence. Debtor elected not to provide, or refused, any testimony under penalty of perjury opposing the Motion to Dismiss.

Additionally, Debtor did not dispute the default, but merely had Debtor's attorney argue for more time—unsupported by any evidence.

In the original Declaration in support of the Motion for Reconsideration (Dckt. 96), Debtor stated that her non-debtor spouse was awaiting $60,000.00 in business income. What she does not say is whether that is $60,000 in income for Debtor and non-debtor spouse personally, or money to be paid to their corporation, the Simi Group, Inc.

The Original Declaration continues, with Debtor stating that $61,133.00 was deposited (in some unidentified account) and $25,000 has been transferred (to some unidentified account). Debtor offers no explanation how $61,133.00 in monies is being transferred between accounts and made available for Debtor.

In the Original Declaration, Debtor then directs the court to an "Excerpt of Bank Record" that is not a "bank record" but appears to be some clipping from a screen shot. That is devoid of any information to identify the bank, the account, or whose money is being represented to the court.

Responding to the Opposition, Debtor's counsel argues new facts, that Debtor has obtained an unidentified "1099 contract position" and will be generating $6,000 per month in "additional income." Dckt. 101. Counsel then argues that the non-debtor spouse has obtained a "similar" unidentified 1099 position and will be making $12,000 per month. Thus, consideration of the Motion to Reconsider should be delayed until the end of April 2018.

Counsel also argues that Debtor's corporation has substantial outstanding accounts receivable totaling $250,000 and that "collection efforts" are being delayed. Nothing is stated by counsel arguing when, if ever, the $250,000 will be recovered.

Debtor does testify that she has "acquired a 1099 position" that increases her income by$6,000 per month. Declaration, Dckt. 104.

The non-debtor spouse provides his Declaration, stating that he has "entered negotiations to obtain a 1099 position that will increase my regular monthly income by $12,000.00 as an independent contractor." Declaration, Dckt. 103 at 1:20–21. Non-debtor spouse provides no indication as to how he can generate an additional $12,000 per month as an independent contractor, the costs and expenses that go with that income, and how that impacts his other income-earning ability.

In his Declaration, non-debtor spouse identifies $167,000 in unpaid accounts receivable. A substantial portion of the monies are owed by two Counties and "Stanford" (which the court infers is the University), all entities that should have no difficulty paying their bills for services actually provided. The other appears to be a private company. Non-debtor spouse offers no explanation as to why these four customers are not paying their bills, if such services have been properly provided.

Non-debtor spouse concludes, requesting that the court delay ruling on Debtor's Motion.

Those additional declarations and arguments do not change the fact that even with the funds that Debtor asserts have been received from Solano County, the $25,000.00 she proposes to use to cure the delinquency in this case and become current would be short by $21,134.85. Debtor has not shown that this case is likely to continue if the court vacates dismissal of her case.

In Debtor's most recent prior bankruptcy case, 15-22909, the court noted the repeated failed attempts to prosecute Chapter 13 cases.

Repeat Plan Defaulter

The court also notes that this is not Debtor's first bankruptcy case. She filed a Chapter 13 case (represented by the same counsel as in this case) on March 19, 2013. Bankr. E.D. Cal. 13- 23661. The first bankruptcy case was dismissed on July 1, 2013, due to Debtor's failure to make any payments in that case. *Id.*; Civil Minutes, Dckt. 32.

This bankruptcy case was filed on April 9, 2015. On June 1, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, asserting that Debtor was $9,500.00 delinquent in payments, having failed to make any payments in this case. Motion, Dckt. 30. The motion was denied without prejudice based on the Debtor having cured the default. Civil Minutes for June 24, 2016 hearing, Dckt. 40.

On December 14, 2015, the Chapter 13 filed another motion to dismiss this case based on the Debtor being $26,250.00 delinquent in plan payments. Motion, Dckt. 60. Debtor's explanation as to why she was in default was the same as for the present motion, "payment delayed by political approval processes." Opposition, Dckt. 64. The court issued a conditional order of dismissal. Order, Dckt. 67. The Chapter 13 Trustee did not lodge with the court an order dismissing the case, which indicates that Debtor cured the $26,250.00 arrearage and made the next $10,500.00 plan payment as specified in the conditional order of dismissal.

The Trustee is back, on a third Motion to Dismiss based on a $21,000.00 plan default. Motion, Dckt. 73. In opposition, Debtor provides her "stock response" that it is the "political approval process" which caused the default. Opposition, Dckt. 77. This opposition appears to be a cut and paste of the prior to oppositions. This identical opposition, caused by the third default strains the bounds of credibility.

. . .

Status of The Simi Group, Inc.

The employer of both the Debtor and non-debtor spouse is listed as Simi Group, Inc. When the court reviewed the Secretary of State Website, the status for the corporation with the name The Simi Group, Inc., at the same address as listed on Schedule I for Debtor's and non-debtor spouse's employer, is stated to be Suspended. A LEXISNEXIS search states that the Secretary of State reports that the suspension has been in effect since November 2012. FN.1.

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https://w3.lexis.com/research2/pubrec/searchpr.do?_m=037b2d115ea9a1d80 14b5a053a233869&_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkA b&_md5 =dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1.

The person listed as the president of The Simi Group, Inc. by the Secretary of State is Daniel Patrick Desmond. A search of this court's files discloses that

Daniel Patrick Desmond has filed three recent bankruptcy cases. Bankr. E.D. Cal. Nos. 12-38387, 13-3555, and 14-31728. In each of his three cases, Mr. Desmond has been represented by the same attorney as the Debtor in this case.

. . .

Simi Group, Inc.

Neither Mr. Desmond nor the Debtor list any ownership interest in Simi Group, Inc. on their respective schedules. In addition to identifying the address of the Simi Group, Inc., the Secretary of States reports that Daniel Desmond is the agent for service of process. LEXIS-NEXIS identifies Mr. Desmond as the president.

Whether owned by Debtor or not, it appears that the Simi Group, Inc. is not an entity authorized to do business in California.

. . .

RULING

Cause exists to grant the Trustee the relief requested. However, it appears that it may be in the best interest of creditors to convert the case to one under Chapter 7 rather than dismiss it.

At the hearing, no good reason give for not dismissing this case. Debtor attempted to argue that her misstatements in this case and prior cases under penalty of perjury may have been "inadvertent." Counsel for Debtor (and her husband in his bankruptcy cases) states that Debtor and her husband own Simi Group, Inc., and could not explain why on multiple occasions both of them have stated under penalty of perjury that they own no stock in any corporations.

With respect to failing to disclose the names of their spouse in the various bankruptcy cases, no credible explanation was provided.

With respect to illegally operating a corporation, it's corporate powers having been suspended, counsel for Debtor argued that Debtor could just treat it as a sole proprietorship. That conflicts with the various Schedules I filed in the multiple bankruptcy cases by Debtor and her husband stating that they were and are employed by the corporation. Further, such statements that Debtor would now want to contend she was a sole proprietorship raises a series of other issues, including the non-disclosure of such sole proprietorship and the failure to provide for self employment taxes.

The Debtor is in default, the Debtor has knowingly failed to disclose assets, and the Debtor proposes to fund her plan with the illegal operation of the undisclosed corporation. This case is not being prosecuted in good faith.

15-22909; June 22, 2016 Civil Minutes, Dckt. 81.

The court discussed in the above Civil Minutes that Debtor's and non-debtor spouse's source of income, The Simi Group, Inc., had its corporate powers suspended. Debtor's counsel argued that Debtor's source of income being dependant on a corporation that could not legally operate in California was not of a significant moment for bankruptcy purposes. The court did not find the illegality of the operation of the business to be of no significant moment.

The court searched the California Secretary of State's official website to check on the status of The Simi Group, Inc. on March 24, 2018. Now, almost two years after the above discussion, the California Secretary of State continues to report that The Simi Group, Inc. is a suspended corporation.

C2036777 THE SIMI GROUP, INC.	
Registration Date:	01/12/1998
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC STOCK
Status:	**FTB SUSPENDED**
Agent for Service of Process:	DANIEL P DESMOND 5955 GRANITE LAKE DR., SUITE 170 GRANITE BAY CA 95746
Entity Address:	5955 GRANITE LAKE. DR., SUITE 170 GRANITE BAY CA 95746
Entity Mailing Address:	5955 GRANITE LAKE. DR., SUITE 170 GRANITE BAY CA 95746

https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=CORP&SearchCriteria=the+simi+group&SearchSubType=Keyword; The Simi Group, Inc. link (emphasis added).

Repeatedly, Debtor and the non-debtor spouse have filed Chapter 13 cases, with the assistance of the same counsel. Repeatedly, they have defaulted and had their cases dismissed. After five prior interlocking separate bankruptcy cases, Debtor again defaulted and had the sixth case (between these two debtors) dismissed.

The court is not persuaded that grounds exist under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 to vacate the dismissal. In the Motion, Debtor does not attempt to identify the legal basis or state how proper grounds could exist to vacate the court's prior order. Debtor did not provide a points and authorities citing to the court the proper legal grounds for vacating a prior order. Debtor has not provided a legal analysis explaining why such relief is proper.

At most, Debtor asserts that the financial information given to confirm a plan has turned out not to be accurate; however, Debtor asserts that the court should trust her that some future financial projections will be accurate, notwithstanding the at-least-six prior failures.

Debtor and non-debtor spouse state, and their attorney argues, that Debtor can take on the responsibilities of working to generate an additional $6,000 per month, but they fail to provide any explanation of the impact on all of the other purported income. The same is true for the non-debtor spouse,

but for him, he purports to take on additional responsibilities to earn $12,000 per month, with no explanation of how it impacts his other income.

Further, Debtor and the non-debtor spouse continue to operate The Simi Group, Inc., notwithstanding its corporate status and ability to operate being suspended. Such does not enhance the credibility of other statements and contentions floated by Debtor's counsel, Debtor, and the non-debtor spouse.

Therefore, in light of the foregoing, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Jennifer Rianda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

FINAL RULINGS

22. 17-25403-E-13 BYLLIE DEE **MOTION TO CONFIRM PLAN**
Pro Se **2-12-18 [70]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

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

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

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

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

23. 17-25403-E-13 BYLLIE DEE **OBJECTION TO CLAIM OF SHELLPOINT MORTGAGE SERVICING, CLAIM NUMBER 7**
Pro Se **2-12-18 [75]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

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

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

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

The Objection to Claim having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

24. **17-25904-E-13** **BARBARA MYERS** **MOTION TO CONFIRM PLAN**
NUU-3 **Chinonye Ugorji** **2-8-18 [50]**

Final Ruling: No appearance at the March 27, 2018 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 8, 2018. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Barbara Myers ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on February 12, 2018. Dckt. 55. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Barbara Myers ("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 Amended Chapter 13 Plan filed on February 8, 2018, 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.

25. 17-28320-E-13 MB-1 | **JOSE/BLANCA LOARCA** | **Mario Blanco** | **OBJECTION TO CLAIM OF ALLIED TRUSTEE SERVICES, CLAIM NUMBER 4** | **1-29-18 [15]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 29, 2018. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 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 Proof of Claim Number 4 of Allied Trustee Services is overruled as moot.

Jose Loarca and Blanca Loarca, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Allied Trustee Services ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $857.86. Objector asserts that the Claim is improperly listed as secured when there is no real property to secure the Claim.

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).

On February 2, 2018, Creditor filed Proof of Claim 4-2. That claim asserts that $857.86 is owed as an unsecured claim. According to the pleadings on the record, Creditor agrees with Objector that the claim should have been unsecured and not secured. As of the filing of the amended claim, this Objection became moot, Creditor agreeing with the Objection.

Creditor having amended its claim to agree with the Objection, the Objection to the Proof of Claim is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Allied Trustee Services ("Creditor"), filed in this case by Jose Loarca and Blanca Loarca ("Chapter 13 Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4 of Allied Trustee Services is overruled as moot.

26. 17-28320-E-13 JOSE/BLANCA LOARCA MOTION TO CONFIRM PLAN
MB-2 Mario Blanco 2-5-18 [23]

Final Ruling: No appearance at the March 27, 2018 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, parties requesting special notice, and Office of the United States Trustee on February 5, 2018. By the court's calculation, 50 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Jose Loarca and Blanca Loarca ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on February 13, 2018. Dckt. 31. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Jose Loarca and Blanca Loarca ("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 Amended Chapter 13 Plan filed on February 5, 2018, 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.

27. 18-20140-E-13 DPC-1 | **VIRGINIA RYAN Steele Lanphier** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-14-18 [27]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

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

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

28. **17-28351-E-13** **JONATHAN AREVALO** **MOTION TO CONFIRM PLAN**
RJ-1 **Richard Jare** **2-1-18 [15]**

Final Ruling: No appearance at the March 27, 2018 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, and Office of the United States Trustee on February 1, 2018. By the court's calculation, 54 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Jonathan Arevalo ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on March 5, 2018. Dckt. 20. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Jonathan Arevalo ("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 Amended Chapter 13 Plan filed on February 1, 2018, 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.

29.	**17-24453-E-13 MWB-5**	**MICHELLE QUINLIVAN Mark Briden**	**CONTINUED OBJECTION TO CLAIM OF JP MORGAN CHASE BANK, N.A., CLAIM NUMBER 7 1-22-18 [128]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

Michelle Quinlivan ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim was dismissed without prejudice, and the matter is removed from the calendar.**

30. 17-26462-E-13 ABRAHAM RUELAS MOTION TO CONFIRM PLAN
DEF-2 David Foyil 2-7-18 [45]

Final Ruling: No appearance at the March 27, 2018 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 7, 2018. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); 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 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Abraham Ruelas ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on February 12, 2018. Dckt. 56. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Abraham Ruelas ("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 Amended Chapter 13 Plan filed on February 7, 2018, 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.

31. 18-20283-E-13 DPC-1 | **ADAM SHOOK** **Susan Dodds** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-21-18 [17]**

Final Ruling: No appearance at the March 27, 2018 hearing is required.

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 21, 2018. By the court's calculation, 34 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on April 17, 2018.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Adam Shook ("Debtor") failed to appear at the first Meeting of Creditors.

DEBTOR'S REPLY

Debtor filed a Reply on February 28, 2018. Dckt. 21. Debtor states that he was unable to attend because of an unavoidable work conflict and that he intends to attend the continued meeting on March 22, 2018.

RULING

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 the Chapter 13 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 has testified that he was unable to attend because of an unavoidable work conflict. *See* Dckt. 22. Attendance at the hearing is the Chapter 13 Trustee's only ground to object at this time until Debtor appears and has been examined. Continuance of the Objection is appropriate in light of Debtor's response. The hearing on the Objection is continued to 3:00 p.m. on April 17, 2018.

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 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 the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on April 17, 2018.

32. 17-25586-E-13 JOSE SILVA MOTION TO MODIFY PLAN
GEL-1 Gabriel Liberman 2-7-18 [26]

Final Ruling: No appearance at the March 27, 2018 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, and Office of the United States Trustee on February 7, 2018. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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. Jose Silva ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on March 13, 2018. Dckt. 32. 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 Jose Silva ("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 7, 2018, 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.

33. 10-42089-E-13 HLG-2 | **DAVID/MELISSA HAMMAN** | **Peter Macaluso** | **MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA INC** | **2-26-18 [95]**

Final Ruling: No appearance at the March 27, 2018 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, Creditor, and Office of the United States Trustee on February 26, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Beneficial California Inc ("Creditor") against property of David Hamman and Melissa Hamman ("Debtor") commonly known as 204 Meadow Way, Wheatland, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,812.11. An abstract of judgment was recorded with Yuba County on January 8, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $106,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $303,640.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 93. Debtor has claimed

an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 92.

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 David Hamman and Melissa Hamman ("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 Beneficial California Inc, California Superior Court for Yuba County Case No. YCMCCV G 09-0000615, recorded on January 8, 2010, Document No. 2010R-000247, with the Yuba County Recorder, against the real property commonly known as 204 Meadow Way, Wheatland, 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.

34. **18-20290-E-13** **LUIS MANZO** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-2 **Peter Macaluso**
2-21-18 [32]

Final Ruling: No appearance at the March 27, 2018 hearing is required.

The Objection to Claim of Exemptions is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on March 14, 2018, Dckt. 47; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee 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; and the dismissal being consistent with the reply filed by Luis Manzo ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Claim of Exemptions is dismissed without prejudice.

35. **14-30097-E-13** **IRVIN/THERESA WHITE** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG AND HARVEY FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)**
TLA-7 **Thomas Amberg** **2-16-18 [151]**

Final Ruling: No appearance at the March 27, 2018 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 16, 2018. By the court's calculation, 39 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice only when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Motion for Allowance of Professional Fees is granted.

Thomas Amberg, Jr., the Attorney ("Applicant") for Irvin White and Theresa White, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period September 16, 2015, through January 22, 2018. Applicant requests fees in the amount of $500.00.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on March 13, 2018. Dckt. 158. The Chapter 13 Trustee states that he does not oppose the request for additional fees.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

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

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's for the Estate include defending against motions to dismiss this case and confirming a modified plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 60. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES REQUESTED

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

Motions to Dismiss: Applicant spent 2.50 hours in this category. Applicant reviewed and responded to five motions to dismiss this case filed by the Chapter 13 Trustee.

Motion to Modify Plan: Applicant spent 2.7 hours in this category. Applicant prepared a modified plan, served the plan, responded to the Chapter 13 Trustee's opposition, and attended the hearing.

Motion to Approve Loan Modification: Applicant spent 1.0 hours in this category. Applicant preparing a motion to approve a loan modification and served it on the parties.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Thomas Amberg, Jr., attorney	6.20 hours	$250.00	$1,550.00
Total Fees for Period of Application			$1,550.00

Applicant requests only $500.00 of the $1,550.00 incurred for Client.

FEES ALLOWED

The unique facts surrounding the case, including defending against motions to dismiss and confirming a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $500.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Thomas Amberg, Jr., ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Thomas Amberg, Jr., is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas Amberg, Jr., Professional Employed by Irvin White and Theresa White ("Debtor")

Fees in the amount of $500.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.