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 12.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–11, attempting to first address the items in which short argument is anticipated.

August 7, 2018, at 3:00 p.m.

1.	**18-23505-E-13** **DPC-1**	**ANDREY/MARIYA SLOBODYANYUK** **Eric Schwab**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-10-18 [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)©.

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 July 10, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not

required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Andrey Slobodyanyuk and Mariya Slobodyanyuk's ("Debtor") Plan relies upon a pending motion to avoid judicial lien;

B. Debtor has been receiving additional income/support from their son; and

C. Debtor cannot make the plan payments because the amounts on pay stubs are well below what has been scheduled.

DEBTOR'S RESPONSE

Debtor filed a Response on July 13, 2018. Dckt. 28. Debtor states that they have no basis to oppose the Objection.

RULING

The Chapter 13 Trustee's objections are well-taken. A review of Debtor's Plan shows that it relies on the court avoiding the judicial lien of Yevgeniy Bulgakov. Debtor withdrew that motion, however. Without the court avoiding the judicial lien, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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.

At the Meeting of Creditors, Debtor admitted that their son pays $200.00 per month for automobile insurance listed on Schedule J, but his income and insurance payments are not listed on Schedule I.

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 notes that the pay stubs he received show a gross monthly income of

$1,900.00, not the $4,000.00 listed on Schedule I. Additionally, the paystubs conflict with Schedule I about the amount of withholdings from employment ($82.17 on the paystubs versus $1,000.00 on Schedule I). 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 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. **17-24407-E-13 RPH-5** | **PATRICK/MARGUERITE SEEHUETTER** | **CONTINUED MOTION TO CONFIRM PLAN**
Robert Huckaby | **5-16-18 [91]**

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 May 16, 2018. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

Patrick Seehuetter and Marguerite Seehuetter ("Debtor") seek confirmation of the Amended Plan, but they do not provide any credible testimony in their declaration, merely parrot the provisions of 11 U.S.C. § 1325 and make layperson legal conclusions, and fail to provide personal knowledge testimony of facts from which the court can make the required findings of fact and conclusions of law. *See* Dckt. 93. Examples of these lay debtor's legal conclusions and personal findings in place of the court making such determinations are:

> "5. I am informed and therefore believe and declare that the Third Amended Chapter 13 Plan complies with applicable law." [Debtor admits that Debtor lacks any personal knowledge, but merely states "I'm informed and believe" (because if I believe it, I WIN!).]
>
> "7. The Plan is proposed in good faith and not by any means forbidden by law." [Supplanting the court being burdened with making such legal determination.]

> "9. All secured creditors have either accepted the Plan, or their collateral has been 7 surrendered to them, or the Plan provides to pay them pursuant to Section 1325(a)(5)(B)." [Debtor appears to admit that Debtor has no idea what the Plan provides, but can only parrot the possible alternative for treatment of secured claims permitted under the Bankruptcy Code.]
>
> "10. 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." [Debtor appears to admit that Debtor does not have an informed opinion or knowledge of Debtor's finances, but is only informed (by someone else) and believes (because if it is true, DEBTOR WINS!).]
>
> "11. The Petition was filed in good faith." [Debtor fails, or refuses, to provide the court with any testimony from which the court could make the required determination, merely dictating Debtor's finding for the court to blindly adopt.]

Declaration, Dckt. 93.

The Amended Plan proposes payments of $128.00 for the first three months, then $200.00 for the next three months, then $328.00 for the next three months, and then $425.00 for the remaining fifty-one months. Dckt. 94. 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 June 20, 2018. Dckt. 100. 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 argues that, yet again, no supplemental Schedule J has been filed to support the proposed increase in payments; in fact, what is presented shows only a net disposable income of $130.36. *See* Dckt. 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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, and then to $425.00. There is no evidence to support those increases. Thus, the court may not approve 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.

JULY 17, 2018 HEARING

At the hearing, the matter was continued to 3:00 p.m. on August 7, 2018, at Debtor's request to allow counsel additional time to address the issues identified. Dckt. 103.

RULING

No further pleadings have been filed since the July 17, 2018 hearing.

Debtor's testimony in their Declaration in support of confirmation is not credible. *See* Dckt. 93. 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.

After now more than eight years of the court clearly, fairly, and equally 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.

Further, the court has afforded Debtor and Debtor's counsel an additional three weeks to provide the simple testimony necessary for Debtor to prosecute this proposed Plan in good faith. No supplemental, necessary testimony has been provided.

Debtor has not provided credible evidence for the court to determine that the proposed Chapter 13 Plan complies with the provisions of 11 U.S.C. §§ 1325 and 1322. Debtor demonstrates that she has little knowledge of her plan and these proceedings.

Additionally, the above problems identified by the court have been addressed with Debtor and counsel before. In fact, they were specifically addressed more than once prior to the current Motion being filed, and yet, Debtor submitted a declaration with literal, exact duplicate language. *See* Dckt. 79 (Civil Minutes). The only difference now is that the paragraph numbers have changed.

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 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.

3.	**18-22716-E-13** **DPC-1**	**DOMINIC MIZZI** **Mary Ellen Terranella**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-11-18 [14]**

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

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

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 June 11, 2018. By the court's calculation, 36 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. Dominic Mizzi ("Debtor") failed to attend the Meeting of Creditors, and

B. Debtor failed to provide requested business documents.

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on July 10, 2018, stating that Debtor attended the continued Meeting of Creditors on July 5, 2018, but that the other ground for missing documents was outstanding still. Dckt. 18.

JULY 17, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 7, 2018. Dckt. 23.

CHAPTER 13 TRUSTEE'S SUPPLEMENT

The Chapter 13 Trustee filed a Supplement on July 24, 2018. Dckt. 24. The Chapter 13 Trustee argues that the documents he has been provided show that Debtor has substantially more income to propose to the Plan. 11 U.S.C. § 1325(b). He also notes that he has not been provided with profit and loss statements for the six months prior to filing this bankruptcy case, and he has received a copy of Debtor's request to extend the time to file 2017 tax returns.

RULING

The Chapter 13 Trustee's objection is well-taken. Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements, and
D. Six months of bank account statements.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302©; FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Additionally, Debtor's bank statements indicate that he has more income to propose to the case, such that the Plan violates 11 U.S.C. § 1325(b).

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.

4. 16-26231-E-13 KATHERINE BROWN
Christian Younger

MOTION TO VACATE DISMISSAL OF CASE
7-19-18 [26]

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)©.

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, and Office of the United States Trustee on July 24, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is ~~denied without prejudice.~~

Katherine Brown ("Debtor") filed the instant case on September 19, 2016. Dckt. 1. A plan was confirmed on November 8, 2016, and an order confirming the plan was entered on November 8, 2016. Dckt. 13.

On April 18, 2018, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to delinquency and the Plan not being able to complete within sixty months. Dckt. 18. On May 30,

2018, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 22, 23. The ruling was final because Debtor did not file any opposition.

On July 19, 2018, Debtor filed this instant Motion to Vacate. The Motion document, Dckt. 26 at 2-3, is on a California Judicial Council Form for Temporary Emergency (Ex Parte) Orders, with the boxes for "Property Control" and "Other - Legal Proceedings Regarding Case 16-26231." It is stated to be to "David Cusick/Robert Matsui/Wayne Blackwelder," identified as "Respondent."

On the form, Debtor has checked the box for "Property Control," identifying her as "own or are buying," with the qualifying reference "Katherine Brown Only."

For other orders, Debtor requests that the bankruptcy case be reopened, stating that she has been unable to contact her attorney who has been associated with her case since November of 2017. Section 6 of Motion Form. This is where Debtor states that it is not her request to dismiss the case and that she has sought assistance from the FBI regarding criminal activity that led up to her bankruptcy case.

CHAPTER 13 TRUSTEE'S RESPONSE

Debtor did not set a hearing on the Motion or present it to the judge if pursuing it *ex parte*. The Chapter 13 Trustee did provide notice of the Motion and set it to the court's calendar so it could be addressed by the court.

David Cusick ("the Chapter 13 Trustee") filed a Response on July 25, 2018. Dckt. 29. The Chapter 13 Trustee notes that Debtor paid $2,000.00 in June 2018 after the case was dismissed, at which time she was delinquent $3,137.14.

The Chapter 13 Trustee also notes that Debtor's current address appears to be different, but she has not filed a change of address. He also notes that no substitution of attorney has been filed, despite Debtor's allegation that she has not been able to reach counsel.

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).

A main 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. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Under the terms of the Chapter 13 Plan, Debtor was required to pay $1,943.00 per month for sixty months. Plan ¶¶ 1.01, 1.03; Dckt. 5. The Plan provided for curing a modest default on Debtor's home mortgage (approximately $9,000.00), a modest tax claim ($2,088.98), and a 100% dividend to creditors holding general unsecured claims ($30,010.62). *Id.* The Proofs of Claims filed in the case are consistent with the claims stated in the Plan, with the exception as pointed out by the Chapter 13 Trustee that the

unsecured claims came in approximately $8,000 higher, which would cause the current plan to take 72 months to complete, which is longer than the maximum 60 month terms permitted for a Chapter 13 Plan (11 U.S.C. § 1325(d)).

The Trustee stated in the Motion to Dismiss (Dckt. 18) that the Debtor had funded the Plan with $33,734.00 by the time the $2,048.57 delinquency occurred.

The default, an explanation that communication with counsel has broken down, and the Debtor's efforts to cure the default weigh in favor of affording Debtor the opportunity to continue in the case. However, there is substantial work that must be done in the case for it to proceed, not merely vacating the dismissal and everything proceeding as in the confirmed plan.

It will be necessary for the Plan to be modified (if the Trustee's computation of the monthly payment for the additional approximately $8,000 in unsecured claims are to be paid in full, or the plan modified to provide for less than a 100% dividend.

A review of the present Motion appears to demonstrate that Debtor does not have the requisite legal knowledge to prosecute a bankruptcy case in federal court. Such is not unusual for the real people who are parties to proceedings in federal court everyday. They have not had the legal education and training required to know the federal and local rules, or to understand how the judicial process functions. That's why they have attorneys. FN.1.

FN.1. As shown by Debtor's cobbling together a California State Form, not providing any evidence, not setting the motion for hearing, and not providing grounds as required under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024, merely vacating the dismissal appears to be a recipe for disaster for Debtor, if she is proceeding on her own.

Here, there has been a breakdown between the Debtor and her attorney. However, that does not form a basis, in and of itself, to vacate the dismissal and leave Debtor to flounder in the case. Rather, Debtor needs to seek out and obtain replacement counsel. Such counsel can advise the Debtor whether it is in her interests to try and vacate the dismissal, modify the plan, and proceed over the remaining term of this plan. Alternatively, counsel may determine that Debtor's rights and interests are maximized by the filing of a new case.

At the hearing **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

Debtor has not presented adequate grounds to convince the court that vacating dismissal of this current case is warranted. If Debtor believes that she can proceed with a confirmable plan in a Chapter 13 case, then she can file a new case and propose such a plan, most likely also with new counsel if she cannot reach her counsel in this case.

~~Therefore, in light of the foregoing, the Motion is denied without prejudice.~~

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

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

~~The Motion to Vacate filed by Katherine Brown ("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.~~

5. **18-23531-E-13** **REBECCA SCHLOSSAREK** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mary Ellen Terranella** **PLAN BY DAVID P. CUSICK**
7-10-18 [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)©.

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 July 10, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Rebecca Schlossarek ("Debtor") cannot afford to make the plan payments based upon incorrect income on Schedule I and negative disposable income on Schedule J;

B. Debtor has not provided proof of her Social Security number; and

C. The Plan and pleadings in this case conflict regarding attorney's fees.

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). Debtor admitted at the Meeting of Creditors that she does not receive the income listed from being a "pet sitter" on Schedule I, and she no longer receives income from a "boarder." Additionally, Schedule J lists negative net income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors and is a ground to deny confirmation. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee notes that Section 3.05 of the Plan lists $525.00 in attorney's fees paid pre-petition, but the Rights and Responsibilities and Form 2030 both state that $0.00 was paid. *Compare* Dckt. 5 (Plan), *with* Dckt. 7 (Rights and Responsibilities), 1 (Form 2030). He also notes that the Plan lists $0.00 from each plan payment being paid in attorney's fees. Debtor does not appear to be able to comply with the Plan if the amounts paid are incorrect.

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.

6. **18-23462-E-13** **SHARON JACKSON** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Marc Caraska** **PLAN BY DAVID P. CUSICK**
7-9-18 [33]

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)©.

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 July 9, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The Plan may not comply with the Code because Class 1 calls for interest to be paid on arrears;

B. Sharon Jackson ("Debtor") has not filed tax returns;

C. Debtor may not be able to afford the plan payments because she lists not earning income; and

D. Debtor has not filed the Class 1 Checklist.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee argues that the 4% interest propose on Class 1 arrears may not comply with the Code, unless non-bankruptcy law requires it.

The Trustee notes that the creditor's note calls for interest on unpaid principal only, but that note also indicates that amounts may be added to principal. The Chapter 13 Trustee argues that the provision may actually complies with 11 U.S.C. § 1325(a)(1), but he raises it for its novelty.

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2016 and 2017 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor listed on the Statement of Financial Affairs that she has not earned income this year or within the two prior calendar years, but Schedule I reports being employed with the State of California for the prior twenty-five years. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has failed to provide the Chapter 13 Trustee with the Class 1 Checklist and Authorization to Release Information forms as required by Local Bankruptcy Rules 3015-1(b)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by 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. **18-23462-E-13** **SHARON JACKSON**
RMP-1 **Marc Caraska**

OBJECTION TO CONFIRMATION OF PLAN BY FRANKLIN CREDIT MANAGEMENT CORP.
6-25-18 [25]

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)©.

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

FN.1. The court notes that Creditor attempted to notice this Objection according to Local Bankruptcy Rule 9014-1(f)(1), requiring written opposition to be filed fourteen days before the hearing. *See* Dckt. 26. That is incorrect. Local Bankruptcy Rule 3015-1(c)(4) requires that an Objection to Confirmation be noticed according to Local Bankruptcy Rule 9014-1(f)(2) and specifically "inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary."

The court will consider the Objection, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the objection. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2018. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was not 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), but the court waives that defect this one time. 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.

Franklin Credit Management Corp. as servicer for Bosco Credit LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that it fails to fully cure pre-petition arrears or provide for surrender of collateral as has been proposed for a senior lienholder.

Creditor's objection is 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 $37,125.48 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.

In the Opposition, Creditor states that the Plan does provide for the surrender of the property to the holder of the senior lien, but fails to provide such treatment, and relief from the stay, for Creditor. While such an "oversight" could be corrected by an amendment to the Plan in the order confirming, none has been proposed in response by Debtor. This may be because Debtor realizes that the Plan is not going to be confirmed based upon the Objection of the Chapter 13 Trustee on other grounds.

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 Franklin Credit Management Corp. as servicer for Bosco Credit LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

8. **18-22178-E-13** **BLAIRE KNIGHT** **MOTION TO SELL**
MC-2 **Muoi Chea** **7-17-18 [49]**

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)©.

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, and Office of the United States Trustee on July 17, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Blaire Knight, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. FN.1. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1900 Danbrook Drive, Unit 111, Sacramento, California ("Property").

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

The proposed purchaser of the Property is Arthur Chalmers, and the terms of the sale are:

A. Purchase price of $205,000, all cash;

B. After payment of debts secured by three deeds of trust, net return to Movant of $4,923.15;

C. Escrow to close thirty days after acceptance, which was on July 10, 2018;

D. Escrow and title to be held with Placer Title Company Colleen Brown;

E. Movant to pay for an environmental report, smoke alarm installation, owner's title insurance policy, county transfer taxes, city transfer taxes, homeowner's association transfer fees; and

F. Buyer and Movant to equally split the escrow fee.

Movant does not disclose what broker's commissions are to be paid, but the court notes that a motion to employ a broker was granted on July 17, 2018, for a 5% commission. Dckt. 63. The attached Estimated Closing Statement lists 2.5% commissions for Coldwell Banker Kappel Gateway Realty and Realty One Group Complete. Exhibit A, Dckt. 52.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 20, 2018. Dckt. 55. He states that he does not oppose the Motion as long as it provides for him to be the disbursing agent on Class 1 mortgage arrears to LoanCare and to the homeowner's association fees due to Allied Trustee Services. He notes that the Plan calls for those to be paid by the Chapter 13 Trustee.

The Chapter 13 Trustee notes that the proposed sale includes payments of $5,495.00 and $6,166.00 to Mountain West Financial, Inc., for alleged second and third deeds of trust, but they have not been included in the Plan or on Schedule D. The Chapter 13 Trustee is not aware if the debts were incurred pre- or post-petition.

Finally, the Chapter 13 Trustee argues that no modified plan has been proposed and that Movant has not filed a change of address.

DEBTOR'S RESPONSE

Debtor filed a Response on July 31, 2018. Dckt. 69. Debtor agrees with the Chapter 13 Trustee's request that a check swap procedure be run by the Chapter 13 Trustee. Debtor states that Schedule D has been amended to include Mountain West Financial, Inc.

Finally, Debtor states that she will file a modified plan upon the assumption that the sale is approved. She states that she was waiting until after the sale was approved to propose a modified plan. She also notes that she will file a change of address when that occurs, but currently she is living at the property to be sold.

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 it satisfies all secured claims against the Property while providing a net return to Movant. Nothing in the Bankruptcy Code requires a debtor to include a secured claim in a Chapter 13 plan, and Movant's omission of the claims secured by second and third deeds of trust is not detrimental to this sale, especially because those claims are to be paid completely. On July 25, 2018, the court signed an order confirming Movant's first amended plan, which order states clearly that "[t]he debtor shall immediately notify, in writing, the Clerk of the United States Bankruptcy Court and the trustee of any change in the debtor's address." Dckt. 67. To comply with the confirmed plan and prosecute this case, Movant must notify those parties when her address changes; otherwise, she may incur additional legal battles with a motion to dismiss this case.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately $10,250.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a five percent commission.

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 Blaire Knight, Chapter 13 Debtor, ("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 Blaire Knight, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Arthur Chalmers or nominee ("Buyer"), the Property commonly known as 1900 Danbrook Drive, Unit 111, Sacramento, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $205,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 52, 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 to effectuate the sale.

C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to Chapter 13 Debtor's broker, Coldwell Banker Kappel Gateway Realty.

E. 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.

9. **15-27773-E-13** **KATE KERNER** **CONTINUED MOTION TO MODIFY PLAN**
PGM-1 **Peter Macaluso**
5-28-18 [84]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Kater Kerner ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has been reduced by $6,500.00 per month as a result of the termination of a contract brought about by a conflict with her client. Dckt. 86. The Modified Plan proposes that $63,810.00 be paid through June 2018 and new plan payments of $2,950.00 begin July 2018 for twenty-eight months. Dckt. 87. 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 June 28, 2018. Dckt. 92. The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of

> such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor is currently delinquent $16,663.76 under the confirmed plan. Debtor does not appear to have filed a Supplemental Schedule I, reflecting her current income, despite Debtor stating she is delinquent because of lost income of $6,500 per month starting in October 2017. Dckt. 86. Debtor's 2017 1099 statement reflects a monthly gross income of $21,541.80. Dckt. 92. It appears that Debtor's income has increased from the previous year, and an updated Schedule I would be required if that is the case.

DEBTOR'S REPLY

Debtor filed a Reply on July 9, 2018. Dckt. 95. Debtor states that the updated Schedule J filed with the court is a supplemental schedule, and Debtor requests a continuance to file a Supplemental Schedule I.

JULY 17, 2018 HEARING

At the hearing, the court noted that it could not approve of the modified plan without a current and accurate accounting of Debtor's disposable income. Dckt. 97. The court continued the hearing to 3:00 p.m. on August 7, 2018, to allow Debtor time to file supplemental schedules and pleadings. Dckt. 100.

FILING OF SUPPLEMENTAL SCHEDULE I

On July 31, 2018, Debtor filed a Supplemental Schedule I, which reflects a change in Debtor's income as of July 31, 2018. Dckt. 101. Debtor lists that she is employed by and owns KMK Strategies, LLC. On Supplemental Schedule I Debtor lists having Net Monthly Income of $9,750.00 from the limited liability company.

On what is represented to be her Supplemental Schedule J, Dckt. 91, Debtor includes her taxes and then some of the taxes for the limited liability company - which are not her personal obligation. Debtor also lists having a personal expense of $1,900 for "1099 employees." Again, this appears to be an expense paid by the limited liability company, from which the Net Monthly Income (profit distributions) is computed for Debtor.

With $9,750 of "Net Monthly Income" from the limited liability company, $117,000 annually, having only $500 a month for federal and state income and self-employment taxes (including Social Security taxes) does not appear reasonable.

Debtor may argue,

> "Oh judge, don't' read the Schedules stated under penalty of perjury so literally, I don't really have $9,750.00 a month in gross income from my limited liability company. That is a gross figure, from which the limited liability company (not the

> Debtor personally) pays $1,900 a month for 1099 employees, $100 a month for the limited liability company's tax payments, and $700 a month for my travel. See, there "really" is only $7,000 a month."

Unfortunately, that is not what the Supplemental Schedules I and J say.

COMPARING PRIOR AND CURRENT FINANCIAL INFORMATION PROVIDED UNDER PENALTY OF PERJURY

Debtor has filed the present Motion based upon her having a decrease in gross income from her limited liability company. In her Declaration Debtor states under penalty of perjury that in October 2017 she had to terminate an existing client, which reduced her gross revenues by $6,500 a month. Declaration ¶ 2, Dckt. 86. In Supplemental Schedule I (though Debtor does not so testify in her Declaration), Debtor states under penalty of perjury that the remaining gross billings for the limited liability company – after losing the $6,500 a month for terminating the client – is $9,750 a month. Dckt. 28 at 5.

Having $9,750 a month in *remaining* revenues after losing $6,500 a month in revenues previously received means that **Debtor's limited liability company had $16,250 a month in revenue** before the October 2017 termination of the client.

The prior Confirmed Chapter 13 Plan in this case required monthly plan payments of $2,200 for 14 months and $2,500 for 46 months. Dckt. 12. Due to Debtor's limited income and projected disposable income, Debtor's Chapter 13 Plan could generate only a 0.00% dividend for creditors holding ($41,464) general unsecured claims. Plan ¶ 2.15, Dckt. 12.

This Plan was confirmed based upon the financial information provided by Debtor on her Schedule I and Amended Schedule J. On Schedule I Debtor stated under penalty of perjury that as of the filing of this case she received as income: (1) unemployment compensation of $1,875 and (2) $4,266.49 in "Draws from LLC." Dckt. 10 at 23-24.

On her Amended Schedule J Debtor states under penalty of perjury that her expenses were $3,941.49. Dckt. 28 at 4-7. These expenses include $550 a month for transportation (gas, maintenance), $616 for a car payment (BMW lease), $266 for a supplemental tax Bill, $500 for a supplemental tax offset, and $100 for LLC quarterly taxes. This left only $2,200 with which to fund the Plan.

With the Supplemental Schedule I and Supplemental Schedule J, Debtor appears to change the disclosure methodology, identifying gross income and then putting the business expenses in Supplemental Schedule J. Debtor shows reduced gross limited liability income of $9,750. But, even with this reduced (by 40% from the prior $16,250 a month), Debtor states under penalty of perjury that she has net income (projected disposable income) of $2,950 a month to now fund the Plan and cure her defaults. Dckt. 91 at 5. This is after including all of the limited liability company expenses on her Supplemental Schedule J.

What the evidence shows is that the financial information upon which the original Plan was confirmed in this case was possibly inaccurate. While Debtor based her plan on a "monthly draw," that was

not the actual net income being received by Debtor. Rather, that was the "projected disposable income" that Debtor determined "necessary" to insure that creditors with unsecured claims were paid a 0.00% dividend.

Debtor has admitted that prior to October 2017 the gross monthly income was $16,250. If the court were to charitably assume that only half of the additional $6,500 a month went to the bottom line, Debtor had an "extra" $3,250 a month that was undisclosed, not used to fund the Plan, and diverted for other uses.

RULING

Based on the evidence presented, the proposed Chapter 13 Plan does not comply with 11 U.S.C. § 1329, § 1325 and § 1322. In the Trustee's Opposition, he states that Debtor has not filed a 2017 tax return, but a review of the 1099 shows that Debtor's monthly income was $21,541.80 a month, not the mere $4,266.49 that may have existed when the case was filed. Opposition, Dckt. 92.

Debtor is not providing her projected disposable income into the Plan - currently and during this case. The financial information provided by Debtor does not appear to be accurate. The proposed Plan is not proposed in good faith, and it does not appear that this case has been prosecuted in good faith.

The Motion to Confirmed 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 Confirm the Modified Chapter 13 Plan filed by Kate Kerner ("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.

10. **15-27773-E-13** **KATE KERNER** **CONTINUED MOTION TO DISMISS**
DPC-4 **Peter Macaluso** **CASE**
4-27-18 [78]

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 27, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the bankruptcy case is dismissed.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Kate Kerner ("Debtor") is $11,079.54 delinquent in plan payments, which represents multiple months of the $2,792.11 plan payment. Before the hearing, another plan payment will be due.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 15, 2018. Dckt. 82. Debtor's counsel argues that Debtor promises to file a modified plan before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reasons for the defaults or how such financial failures are not likely to continue in this case.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on May 28, 2018. Dckt. 84, 87. The court reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 84, 86. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

MAY 30, 2018 HEARING

Debtor appearing to actively prosecute the case, the court considered denying the Motion without prejudice, but because of the amount in default, the court instead continued the hearing to 3:00 p.m. on July 17, 2018. Dckt. 89, 90.

JULY 17, 2018 HEARING

At the hearing, the court continued this matter to 3:00 p.m. on August 7, 2018, to be heard in conjunction with Debtor's motion to confirm. Dckt. 98, 99.

RULING

At the August 7, 2018 hearing, the court reviewed the supplemental pleadings related to Debtor's motion to confirm a modified plan and found that the finances she has presented to the court are unbelievable and do not support confirmation of a plan. With modification of her plan, Debtor appears to remain delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court has denied confirmation of the proposed Modified Plan. As noted, the court determined that the income information provided by Debtor under penalty of perjury was, and appears to continue to be, significantly inaccurate. During this case, if not when the case was filed, Debtor income was substantially greater than represented under penalty of perjury. Debtor has not filed, and has not provided the Trustee with a 2017 tax return - the tax year in which the Debtor has admitted that the gross income was at least $6,500 a month greater than previously represented. From the evidence, Debtor has received, and not accounted for, substantially more monthly income during this Chapter 13 case, while defaulting $11,079.54+ in the modest plan payments for a Plan with a 0.00% dividend for creditors with unsecured claims.

The Chapter 13 Trustee has requested only that this case be dismissed. The Chapter 13 Trustee has not requested the case be dismissed with prejudice – thereby precluding Debtor from ever discharging the unsecured claims for which she sought to pay a 0.00% dividend.

Cause exists to dismiss this Chapter 13 case and the Motion is granted.

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

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

11. **18-23320-E-13 AP-1** | **SUZANNE CHUNG** **Jasmine Nguyen** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.** **7-5-18 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 5, 2018. By the court's calculation, 26 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.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Suzanne Chung's ("Debtor") Plan does not cure pre-petition arrears on Creditor's claim.

Creditor's objection is well-taken. Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,071.49 in pre-petition arrearages. Proof of Claim 4-1. 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.

ORDER CONTINUING HEARING

On July 30, 2018, the court entered an order continuing the hearing on this Objection pursuant to a stipulation between the parties to 3:00 p.m. on August 7, 2018. Dckt. 20.

RULING

No further pleadings have been filed indicating whether the parties have resolved this Objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("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.

FINAL RULINGS

12. 18-23407-E-13 DPC-1 | **TYRA FRIZELLE**
Kristy Hernandez | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
7-9-18 [18]

Final Ruling: No appearance at the August 7, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 9, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection 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 Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan has been Dismissed (Fed. R. Civ. P. 41(a)(1)(A)(I) and Fed. R. Bankr. P. 7041, 9014) by the Chapter 13 Trustee (Dckt. 22), and this matter **is removed from the calendar.**

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Tyra Frizelle ("Debtor") did not attend the first Meeting of Creditors.

The Chapter 13 Trustee's objection is 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).

Attendance of Debtor at Continued Meeting of Creditors

The Continued Meeting of Creditors was held on August 2, 2018, and the Chapter 13 Trustee reports that Debtor appeared at the continued meeting and it was concluded.

On August 3, 2018, the Chapter 13 Trustee filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 a Notice of Dismissal of the Objection to Confirmation (Dckt. 22). The Motion having been dismissed without prejudice by Movant, **the hearing is removed from the calendar.**

Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

13. 16-25605-E-13 SLH-2 | **FRED/SUEANE RICHARDS** **Seth Hanson** | **OBJECTION TO CLAIM OF CAPITAL ONE AUTO FINANCE, CLAIM NUMBER 13** **6-21-18 [29]**

Final Ruling: No appearance at the August 7, 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, parties requesting special notice, and Office of the United States Trustee on June 20, 2018. By the court's calculation, 48 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 13-2 of Capital One Auto Finance is sustained, and the claim is disallowed in its entirety.

Fred Richards and Sueane Richards, Chapter 13 Debtor, ("Objector") request that the court disallow the claim of Capital One Auto Finance, a division of Capital One, N.A. c/o American InfoSource Portfolio Services LP ("Creditor"), Proof of Claim No. 13-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,028.51. Objector asserts that the Proof of

Claim was filed late, both after the deadline and more than a year after the Claim's underlying events occurred.

Objector argues that the late filing leaves them with less time to modify the Plan, which also indicates that Creditor's claim is satisfied fully by surrender of collateral. *See* Dckt. 5.

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).

A plan was filed in this case on August 24, 2016, and it was confirmed by the court on October 19, 2016. *See* Dckt. 5, 24. The Plan includes the Claim in Class 3, which states explicitly: "**Class 3 includes all secured claims satisfied by the surrender of collateral.** Upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral." Dckt. 5.

The argument before the court is that Creditor chose to enforce its rights against the collateral by auctioning it for sale. Upon confirmation of the Plan, the secured portion of Creditor's claim was satisfied.

Creditor filed Proof of Claim 13-1 on November 18, 2016 (after confirmation of the Plan), indicating that its claim was fully secured in the amount of $10,587.35. On May 1, 2018, Creditor amended its claim to show that now, it is owed only an unsecured claim of $7,028.51.

An attached letter to Proof of Claim 13-2 is dated April 26, 2018, and states that Creditor "has advised that the collateral on this account was repossessed and sold" on March 28, 2017. The letter shows the following breakdown of how it calculated an alleged debt:

1.	Total Claim Amount (secured and unsecured): $10,587.35	
2.	Unsecured Claim Amount Due:	
3.	Secured Claim Amount:	$10,587.35
	Principal Payments Received:	-
	Interest Charges	+
	Interest Payments	-
	Sale Proceeds:	- $3,900.00
	Refunds/Rebates	- $67.79
	Payments received post receipt of sale proceeds	-
	Repo/Auction Fees	+ $408.95

	Balance	$7,028.51
4.	Refund Amount:	No refund is owed
5.	Deficiency Claim Amount Due:	$7,028.51

Judging from the face of the pleadings and the proofs of claim filed in this case, Creditor had asserted a secured claim of $10,587.35. The confirmed plan treated that claim as satisfied by surrendering collateral to Creditor. Following an auction of the collateral, insufficient funds were recovered to satisfy the full amount Creditor asserts was owed. So, Creditor amended its claim to assert that the remaining unpaid portion is unsecured to be paid by the Plan, which proposes a 100% dividend to general unsecured claims, thus securing full payment of the original secured claim.

Creditor's tactic is inappropriate. Creditor does not get to reclassify its claim after the fact merely because it is unsatisfied with the financial return from auction. Creditor waited until after the Plan had been confirmed by the court to file its first proof of claim, and in that proof of claim, Creditor clearly asserted that all of its claim was secured, even though it proposed a collateral value that was roughly half of the secured portion of the claim. Creditor deliberately omitted listing any portion of the claim as unsecured.

By the terms of the Plan, Creditor's full claim was satisfied by surrender of collateral because all that Creditor asserted was a secured claim. Creditor was on notice as to how its claim would be treated before it ever filed a proof of claim, and yet, Creditor chose to only present a secured claim. Creditor does not now get to rearrange its pleadings to milk additional funds out of this bankruptcy case because of how it presented its claim initially.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Capital One Auto Finance, a division of Capital One, N.A. c/o American InfoSource Portfolio Services LP ("Creditor"), filed in this case by Fred Richards and Sueane Richards, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 13-2 of Capital One Auto Finance, a division of Capital One, N.A. c/o American InfoSource Portfolio Services LP is sustained, and the claim is disallowed in its entirety.

14. **16-25321-E-7** **JAY COHEN** **CONTINUED MOTION FOR RELIEF**
CJO-1 **Steele Lanphier** **FROM AUTOMATIC STAY**
3-19-18 [133]

U.S. BANK TRUST, N.A. VS.

Final Ruling: No appearance at the August 7, 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 7 Trustee, and Office of the United States Trustee on March 19, 2018. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on August 16, 2018, by prior order.

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc., as attorney in fact ("Movant") seeks relief from the automatic stay with respect to Jay Cohen's ("Debtor") real property commonly known as 9029 Boise Court, Sacramento, California ("Property"). Movant has provided the Declaration of Melba Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Arredondo Declaration states that there are eighteen post-petition defaults in the payments on the obligation secured by the Property, with a total of $33,239.16 in post-petition payments past due. The Declaration also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of $9,233.10.

PRIOR ORDER CONTINUING HEARING

Pursuant to a joint *ex parte* motion/stipulation between the parties, the court entered an order on April 2, 2018, continuing the hearing to 3:00 p.m. on July 17, 2018. Dckt. 149.

JULY 17, 2018 HEARING

At the hearing, the court continued the matter to August 7, 2018, having provided notice to Debtor that the court will carefully review any new pleadings filed to support reconversion of the case and an ability to prosecute a Chapter 13 plan.

CURRENT ORDER CONTINUING HEARING

On July 26, 2018, the court entered an order continuing the hearing to 10:30 a.m. on August 16, 2018, to be heard in conjunction with the Motion to Reconvert this case to one under Chapter 13.

The hearing has been continued by prior order.

15.	**16-28127-E-13** **SDB-5**	**CARLOS/ANGEL LORTA** **Scott de Bie**	**MOTION BY W. SCOTT DE BIE TO WITHDRAW AS ATTORNEY** **6-26-18 [77]**

Final Ruling: No appearance at the August 2, 2018 hearing is required.

The Motion to Withdraw as Attorney is dismissed without prejudice.

Scott de Bie ("Movant") having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 27, 2018, Dckt. 85; no prejudice to the responding party appearing by the dismissal of the Motion; Movant having the right to request dismissal of the motion 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 response filed by David Cusick ("the Chapter 13 Trustee"); the Ex Parte Motion is granted, Movant's Motion is dismissed without prejudice, and the court removes this Motion 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 Motion to Withdraw as Attorney filed by Scott de Bie ("Movant") having been presented to the court, Movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 85, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is dismissed without prejudice.

16. 11-31275-E-13 BLG-8 | **KEVIN/MEGAN CANFIELD** **Chad Johnson** | **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **7-10-18 [151]**

Final Ruling: No appearance at the August 7, 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 July 10, 2018. By the court's calculation, 28 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 Capital One Bank (USA) N.A. ("Creditor") against property of Kevin Canfield and Megan Canfield ("Debtor") commonly known as 3830 Las Pasas Way, Sacramento, California ("Property").

A judgment was entered against Megan Rogers (listed as another name used in the prior eight years by Megan Canfield) in favor of Creditor in the amount of $33,893.73. An abstract of judgment was recorded with Sacramento County on October 21, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $360,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $538,424.95 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) & (5) in the amount of $1.00 on Amended Schedule C. Dckt. 160.

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 Kevin Canfield and Megan Canfield ("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 Capital One Bank (USA) N.A., California Superior Court for Sacramento County Case No. 34200900035406CLCLGD, recorded on October 21, 2010, Book 20101021 and Page 0442, with the Sacramento County Recorder, against the real property commonly known as 3830 Las Pasas Way, 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.

17. **11-31275-E-13** **KEVIN/MEGAN CANFIELD** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.**
BLG-9 **Chad Johnson** **7-10-18 [154]**

Final Ruling: No appearance at the August 7, 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 July 10, 2018. By the court's calculation, 28 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 Capital One Bank (USA) N.A. ("Creditor") against property of Kevin Canfield and Megan Canfield ("Debtor") commonly known as 7118 Astron Parkway, Sacramento, California ("Property").

A judgment was entered against Megan Rogers (listed as another name used in the prior eight years by Megan Canfield) in favor of Creditor in the amount of $33,893.73. An abstract of judgment was recorded with Sacramento County on October 21, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $115,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $217,555.13 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) & (5) in the amount of $1.00 on Amended Schedule C. Dckt. 160.

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 Kevin Canfield and Megan Canfield ("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 Capital One Bank (USA) N.A., California Superior Court for Sacramento County Case No. 34200900035406CLCLGD, recorded on October 21, 2010, Book 20101021 and Page 0442, with the Sacramento County Recorder, against the real property commonly known as 7118 Astron Parkway, 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.

18. 17-27988-E-13 SHERRY EVANS MOTION TO MODIFY PLAN
BLG-1 Chad Johnson 7-2-18 [25]

Final Ruling: No appearance at the August 7, 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 July 2, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Sherry Evans ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on July 23, 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 Sherry Evans ("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 July 2, 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.

19. 18-21488-E-13 CLH-2 | **DANIEL/ALLISON BRENNAN** **Charles Hastings** | **MOTION TO VALUE COLLATERAL OF THE UNITED STATES INTERNAL REVENUE SERVICE** **7-6-18 [48]**

Final Ruling: No appearance at the August 7, 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, parties requesting special notice, and Office of the United States Trustee on July 6, 2018. By the court's calculation, 32 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of $54,996.76.

The Motion filed by Daniel Brennan and Allison Brennan ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of real property commonly known as 11840 Gidaro Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a replacement value of $780,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor argues that a property value of $780,000.00 less $701,576.80 owed to a claim secured by a first deed of trust, leaves $78,423.80 in value for Creditor's secured claim.

Creditor filed Proof of Claim No. 2-2 on May 21, 2018. The Proof of Claim asserts that $478,641.71 is secured by the Property, that $141,282.83 is a priority unsecured claim, and that $39,054.91 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 23, 2018. Dckt. 61. The Chapter 13 Trustee argues that the Motion does not comply with Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1(d) because it does not cite any applicable law.

Debtor addressed the issue by filing an amended motion citing to 11 U.S.C. § 506(a)(1). Dckt. 68.

DISCUSSION

Debtor argues that JP Morgan Chase Bank holds a senior in priority first deed of trust with an approximate balance of $701,576.80. That creditor filed Proof of Claim 4-1 on May 17, 2018, and listed that its claim is fully secured in the amount of $725,003.24.

Therefore, the senior in priority first deed of trust secures a claim with a balance of approximately $725,003.24. Creditor's tax lien secures a claim with a balance of approximately $658,979.45. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $54,996.76, the value of the Estate's interest in the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Daniel Brennan and Allison Brennan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service ("IRS" or "Creditor") secured by an asset described as real property commonly known as 11840 Gidaro Drive, Elk Grove, California ("Property") is determined to be a secured claim in the amount of $54,996.76, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

20. 18-21488-E-13 CLH-3 | **DANIEL/ALLISON BRENNAN** **Charles Hastings** | **MOTION TO VALUE COLLATERAL OF STATE OF CALIFORNIA FRANCHISE TAX BOARD** **7-6-18 [53]**

Final Ruling: No appearance at the August 7, 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, parties requesting special notice, and Office of the United States Trustee on July 6, 2018. By the court's calculation, 32 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of the Franchise Tax Board is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion filed by Daniel Brennan and Allison Brennan ("Debtor") to value the secured claim of the Franchise Tax Board ("FTB" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of real property commonly known as 11840 Gidaro Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a replacement value of $780,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor argues that a property value of $780,000.00 less $701,576.80 owed to a claim secured by a first deed of trust, and less the amount owed to the Internal Revenue Service on its tax lien, leaves $0.00 in value for Creditor's secured claim.

Creditor filed Proof of Claim No. 1-2 on June 15, 2018. The Proof of Claim asserts that $5,466.35 is secured by the Property, that $28,429.06 is a priority unsecured claim, and that $1,287.78 is a general unsecured claim.

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).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 23, 2018. Dckt. 63. The Chapter 13 Trustee argues that the Motion does not comply with Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1(d) because it does not cite any applicable law.

Debtor addressed the issue by filing an amended motion citing to 11 U.S.C. § 506(a)(1). Dckt. 66.

DISCUSSION

Debtor argues that JP Morgan Chase Bank holds a senior in priority first deed of trust with an approximate balance of $701,576.80. That creditor filed Proof of Claim 4-1 on May 17, 2018, and listed that its claim is fully secured in the amount of $725,003.24. Debtor argues that after payment of the debt secured by a first deed of trust and the Internal Revenue Service's claim that there will be no interest of the Estate left to secure the FTB's secured claim.

The senior in priority first deed of trust secures a claim with a balance of approximately $725,003.24, and the Internal Revenue Service's secured claim has been valued at 54,996.76. Creditor's tax lien secures a claim with a balance of approximately $35,182.19. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the Estate's interest in the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB*

Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Daniel Brennan and Allison Brennan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Franchise Tax Board ("FTB" or "Creditor") secured by an asset described as real property commonly known as 11840 Gidaro Drive, Elk Grove, California ("Property") is determined to be a secured claim in the amount of $0.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

21. 18-20196-E-13 KWS-1 | **DEBORAH ANDREASEN** **Kyle Schumacher** | **MOTION TO AVOID LIEN OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT 7-5-18 [21]**

Final Ruling: No appearance at the August 7, 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 July 5, 2018. By the court's calculation, 33 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 California Employment Development Department ("Creditor") against personal property of Deborah Andreasen ("Debtor") listed on Schedule B as:

A. 2008 Hyundai Sonata,
B. Household Goods of $730.00,
C. Electronics of $400.00,
D. Collectibles of $100.00,
E. Clothes of $200.00,
F. Jewelry of $20.00,
G. U.S. Bank Checking Account,
H. U.S. Bank Savings Account,
I. Security Deposit of $1,500.00, and
J. Tax Refund of $37.00 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,276.61. An abstract of judgment was recorded with Sacramento County on September 5, 2017, that encumbers the Property.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on July 23, 2018. Dckt. 26. The Chapter 13 Trustee notes that Creditor has been listed on Schedule F with a nonpriority unsecured claim, and the Plan does not provide for the lien, but Creditor filed Proof of Claim 5-1 on June 7, 2018, asserting a secured claim of $14,810.32.

The Chapter 13 Trustee states that he does not oppose the Motion.

RULING

Pursuant to Debtor's Schedule B, the subject personal property has an approximate value of $6,901.03 as of the petition date. Dckt. 1. The one unavoidable consensual lien (against Debtor's vehicle valued at $3,909.00) totals $4,702.79 as of the commencement of this case as stated on Debtor's Schedule D and Wells Fargo Dealer Service's proof of claim. Dckt. 1; Proof of Claim 4-1.

Debtor has claimed full exemptions pursuant to California Code of Civil Procedure § 703.140(b)(3)–(5) on Schedule C for the personal property, excluding her vehicle that is overencumbered and an empty savings account:

A.	$730.00	Household Goods,
B.	$400.00	Electronics,
C.	$100.00	Collectibles,
D.	$200.00	Clothes,
E.	$20.00	Jewelry,
F.	$5.03	U.S. Bank Checking Account,
G.	$1,500.00	Security Deposit of $1,500.00, and
H.	$37.00	Tax Refund.

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 Deborah Andreasen ("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 California Employment Development, California Superior Court for Sacramento County Case No. 34-2017-90012032, recorded on September 5, 2017, Document No. 201709050464, with the Sacramento County Recorder, against the personal property commonly known as:

A. 2008 Hyundai Sonata,
B. Household Goods of $730.00,
C. Electronics of $400.00,
D. Collectibles of $100.00,
E. Clothes of $200.00,
F. Jewelry of $20.00,
G. U.S. Bank Checking Account,
H. U.S. Bank Savings Account,
I. Security Deposit of $1,500.00, and
J. Tax Refund of $37.00

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.