



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
November 10, 2014

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 08-23005-MKN
)	Chapter 13
TYRONE HOLEFIELD and)	
ELONDIA R. HOLEFIELD,)	
)	Date: November 5, 2014
Debtors.)	Time: 2:30 p.m.
)	

**ORDER ON TRUSTEE’S MOTION TO ALLOW DISBURSEMENT
OF PERSONAL INJURY SETTLEMENT PROCEEDS¹**

On November 5, 2014, the court heard the Trustee’s Motion to Allow Disbursement of Personal Injury Settlement Proceeds brought by Rick A. Yarnall. The appearances of counsel were noted on the record. After oral arguments were presented, the matter was taken under submission.

BACKGROUND

On October 31, 2008, Tyrone Holefield (“Tyrone”) and Elondia R. Holefield

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned bankruptcy proceeding as they appear on the docket maintained by the clerk of the court. All references to “Section” shall be to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (“Code”), unless otherwise indicated. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 (“Elondia”)² filed a joint petition under Chapter 13, along with a proposed Chapter 13 plan #1
2 (“Plan #1”).³ Section 1.02 of Plan #1 specified that the applicable commitment period is five
3 years (60 months) because the Debtors are above median as stated in Section 1.03 of the plan.⁴
4 The case was assigned to a Chapter 13 bankruptcy trustee, Rick Yarnall (“Chapter 13 Trustee”).
5 (ECF No. 8). On February 13, 2009, an order was entered confirming Plan #1. (ECF No. 22).

6 On October 30, 2009, Debtors filed a proposed modified Chapter 13 plan #2 (“Plan #2”).
7 (ECF No. 42). On December 18, 2009, an order was entered confirming Plan #2. (ECF No. 49).

8 On September 12, 2012, the Chapter 13 Trustee filed proposed modified Chapter 13 plan
9 #3 (“Plan #3”). (ECF No. 92).

10 On October 19, 2012, the Debtors filed proposed modified Chapter 13 plan #4 (“Plan
11 #4”). (ECF No. 98). On November 21, 2012, an order was entered confirming Plan #4. (ECF
12 No. 105).⁵

13 On July 26, 2013, Debtors filed a notice of change of address indicating that they had
14 moved to West Covina, California. (ECF No. 107).

15 On August 16, 2013, the Law Office of Adam S. Kutner (“ASK”) filed an application to
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19 ² Tyrone and Elondia will be referred to together as “Debtors.”

20 ³ Debtors’ joint petition also was accompanied by their schedules of assets and liabilities
21 and other information required by Section 521(a)(1). Their real property Schedule “A” listed a
22 principal residence and two rental properties.

23 ⁴ The maximum period of payments under a Chapter 13 plan is five years. 11 U.S.C. §
24 1322(d)(1)(C); 11 U.S.C. § 1322(d)(2)(C). Unless otherwise ordered, a debtor must commence
25 making payments in Chapter 13 no later than 30 days after filing the bankruptcy petition. 11
26 U.S.C. § 1326(a)(1). The sixtieth month after the Debtors’ case was filed was October 2013.

⁵ Section 1.04 of Plan #4 alleges the liquidation value of the Debtors’ estate to be
\$13,950.00. Section 1.10 alleges the total of all plan payments, including trustee fees, to be
\$26,696.20.

1 be employed as special counsel⁶ (“ASK Employment Application”). (ECF No. 110). The
2 application sought approval for ASK to represent Elondia effective August 25, 2011, with
3 respect to personal injuries she suffered in an automobile accident that occurred on August 22,
4 2011 (“PI Claim”).

5 On May 2, 2014, creditor Nevada Chiropractic Rehabilitation (“NCR”) filed a proof of
6 claim in the amount of \$16,843.07.

7 On May 8, 2014, the Chapter 13 Trustee objected to the NCR proof of claim on grounds
8 that it was untimely. (ECF No. 121).

9 On May 12, 2014, ASK filed an application for approval of a personal injury settlement,
10 to pay special counsel fees, to disburse funds to various creditors, and to disburse any remaining
11 funds to Elondia. (ECF No. 124).⁷

12 On May 23, 2014, Debtors filed an amended personal property Schedule “B” listing in
13 Item 19 the postpetition automobile accident as having a settlement amount of \$40,500.00, as
14 well as an amended Schedule “C” claiming the interest in the automobile accident settlement
15 proceeds as exempt in the amount of \$32,300. (ECF No. 133).

16 On May 28, 2014, the Chapter 13 Trustee objected to the claim of exemption. (ECF No.
17 135).

18 On June 26, 2014, Debtors filed an amended Schedule “C” that reduced the settlement
19 exemption claim to \$16,150. (ECF No. 144).

20 On July 9, 2014, an order was entered sustaining the Chapter 13 Trustee’s objection to
21 the NCR proof of claim. (ECF No. 145).

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23 ⁶ The requested authorization included the employment of the Law Firm of Fassett &
Cardoza that ASK presumably associated to pursue the claim.

24 ⁷ The application was accompanied by the Amended Declaration of Victor Cardoza, Esq.
25 (ECF No. 128), to which was attached as Exhibit “1” a copy of a Personal Injury Retainer
26 Agreement signed by Elondia on August 25, 2011. Also attached as Exhibit “2” was an
Amended Proposed Disbursal Statement apparently dated May 7, 2014.

1 On July 22, 2014, an order was entered approving a settlement of the PI Claim in the
2 gross amount of \$130,000, approving the employment of ASK as special counsel, approving the
3 disbursement of professional fees and medical expense claims, approving the disbursement of
4 \$16,150 to Elondia on her claimed exemption, and reserving a balance of \$24,298.33 to be held
5 by the Chapter 13 Trustee (“Contested Funds”). (ECF No. 147).

6 On July 31, 2014, Debtors filed a motion to compel the Chapter 13 Trustee to close the
7 Chapter 13 case and to arrange for the issuance of an order of discharge (“Motion to Compel”).
8 (ECF No. 149).

9 On August 28, 2014, the Chapter 13 Trustee filed opposition to the Motion to Compel
10 (ECF No. 156) along with a separate motion seeking authority to disburse the Contested Funds
11 to allowed unsecured claimants (“Disbursement Motion”). (ECF No. 157). On September 17,
12 2014, the Debtors filed opposition to the Disbursement Motion (ECF No. 161) and on September
13 18, 2014, the Chapter 13 Trustee filed a reply. (ECF No. 163).

14 The hearings on the Motion to Compel and the Disbursement Motion were continued
15 from time to time. On October 7, 2014, an order was entered continuing the hearings to
16 November 5, 2014, and also directing the parties to brief certain matters that were not addressed
17 in their prior legal memoranda.⁸

18 On October 29, 2014, Debtors filed their responsive brief (ECF No. 170) and on the same
19 date, the Chapter 13 Trustee filed his brief. (ECF No. 172).

20 **DISCUSSION**

21 By the Disbursement Motion, the Chapter 13 Trustee seeks authority to disburse the
22 Contested Funds to allowed unsecured claims. Debtors argue that they have completed the
23 payments required by Plan #4 and that they are entitled to the Contested Funds.

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26 ⁸ The Motion to Compel is the subject of a separate order entered concurrently with the
instant order.

1 Section 1306 governs property of a bankruptcy estate in Chapter 13 proceedings. In
2 addition to “the property specified in section 541” of the Code, property of a Chapter 13 estate
3 includes “all property of the kind specified in such section that the debtor acquires after the
4 commencement of the case but before the case is closed, dismissed, or converted to a case under
5 chapter 7, 11, or 12 of this title . . . ” 11 U.S.C. § 1306(a)(1). Under Section 541, property of a
6 bankruptcy estate includes all “legal or equitable interests of the debtor.” It is well established
7 that a debtor’s cause of action or claim for relief constitutes a legal or equitable interest that is
8 property of a bankruptcy estate. See Sierra Switchboard Co. v. Westinghouse Electric Corp.,
9 789 F.2d 705, 707 (9th Cir. 1986). In the instant case, Debtors filed their Chapter 13 proceeding
10 on October 31, 2008, and the PI Claim arose when the automobile accident occurred on August
11 22, 2011. Under Section 1306(a)(1), the PI Claim therefore constitutes property of the Debtors’
12 bankruptcy estate.⁹

13 Section 1327(b) states that “Except as otherwise provided in the plan or the order
14 confirming the plan, the confirmation of a plan vests all of the property of the estate in the
15 debtor.” All three of the Chapter 13 plans that were confirmed in this proceeding contained an
16 identical Section 5.03 which provides as follows: “Any property of the estate scheduled under
17 §521 shall revert in the Debtor upon confirmation. In the event the case is converted to a case
18 under Chapter 7, 11, or 12 of the Bankruptcy Code or is dismissed, the property of the estate
19 shall be determined in accordance with applicable law.” (Emphasis added). None of the orders
20 confirming the Debtors’ plans contained any language addressing the provisions for vesting of
21 property of the estate. Thus, under Section 1327(b) of the Code, the language of Section 5.03 of
22 the confirmed plans would control the issue of vesting.

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24 ⁹ The language of Section 1306(a)(1) controls in Chapter 13 proceedings even if it
25 broadens the scope of property encompassed by Section 541. See Dale v. Maney (In re Dale),
26 505 B.R. 8, 11-13 (B.A.P. 9th Cir. 2014) (inheritance acquired by the Chapter 13 debtor more
than 180 days postpetition was property of Chapter 13 estate where the case had not been closed,
dismissed, or converted.).

1 Section 1327(c) states that “Except as otherwise provided in the plan or the order
2 confirming the plan, the property vesting in the debtor under subsection (b) is free and clear of
3 any claim or interest of any creditor provided for by the plan.” Additionally, the vesting of
4 property of the estate in the debtor upon confirmation of a Chapter 13 plan has the legal effect of
5 removing title to the property and its ownership from the bankruptcy estate. See Kendall v.
6 Jones (In re Jones), 657 F.3d 921, 928 (9th Cir. 2011). In the instant case, Plan #4 was
7 confirmed by an order entered on November 21, 2012. The PI Claim arose when the automobile
8 accident occurred on August 22, 2011, and therefore constituted property of the estate under
9 Section 1306(a)(1). The PI Claim was never scheduled by the Debtors pursuant to Section
10 521(a) of the Code until they amended their personal property Schedule “B” on May 23, 2014,
11 well after the order was entered confirming Plan #4.¹⁰

12 While a Chapter 13 plan may certainly “provide for the vesting of property of the estate,
13 on confirmation of the plan or at a later time, in the debtor or in any other entity,” see 11 U.S.C.
14 § 1322(b)(9),¹¹ such a provision cannot be effective unless parties in interest have prior notice
15 and an opportunity to object. See Fed.R.Bankr.P. 2002(b)[28 days notice of hearing on plan
16 confirmation]; Fed.R.Bankr.P. 2002(a)(5)[21 days notice of deadline to accept or reject proposed
17 modification of a plan]. Compare Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193,
18 1200-02 (9th Cir. 2008), aff’d, 130 S.Ct. 1367 (2010)(parties given notice have opportunity to
19 object to treatment under Chapter 13 plan or pursue available remedies). A proposed
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22 ¹⁰ By its express terms, Section 5.03 of Plan #4 vested in the Debtors only the property
23 of the estate “scheduled under §521.” It did not provide for any other methods of disclosure of
24 estate property that would vest under the plan.

25 ¹¹ The vesting of estate property in the debtor is a permissive provision that may be
26 included in a proposed Chapter 13 plan. The leading treatise on Chapter 13 practice discusses at
length the advantages and disadvantages of a plan that provides for property of the estate to vest
in the debtor upon plan confirmation. See KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, 3D ED.
§ 207.1 (2000 & Supp. 2004).

1 modification to a confirmed Chapter 13 plan also requires that prior notice and an opportunity to
2 object be given to all creditors. See Fed.R.Bankr.P. 3015(g).¹² In this case, Debtors never
3 scheduled the PI Claim until sixteen months after Plan #4 was confirmed. Under FRBP 1009(a),
4 notice of an amendment to a debtor's schedules must be given "to any entity affected thereby."
5 Although the Debtors filed their amended Schedule "B" on May 23, 2014, there is no indication
6 in the record that notice of the amendment was ever served on their creditors. Under no
7 circumstances then, did the Debtors ever give notice that the PI Claim would be removed from
8 the bankruptcy estate through the vesting language of Section 5.03 of their proposed Plan #4. As
9 a result, the Contested Funds remain property of the Chapter 13 estate.

10 This result is consistent with the conclusion reached by the Ninth Circuit in In re Jones.
11 In Jones, the circuit panel discussed the interplay between Section 1306(a)(1) and Section
12 1327(b), and the various approaches to "determining whether and to what extent property of the
13 estate reverts in the [Chapter 13] debtor at plan confirmation." 657 F.3d at 927. After
14 summarizing four possible approaches employed by various courts, the panel expressly rejected
15 one of them, but did not adopt any of the others. 657 F.3d at 927-28.¹³ Instead, the panel
16 emphasized the self-executing language in Section 1327(b) providing for estate property to vest
17 in the debtor at confirmation, unless the debtor elects to include a plan provision to specifically
18 address the vesting of property of the estate. 657 F.3d at 928.¹⁴ Because the debtor in Jones

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20 ¹² See also In re Bissell, 2009 WL 1451646 at * 2 (Bankr.D.Nev. May 20, 2009) ("The
21 procedure for modification, as stated in Rule 3015(g), requires the debtor to file a motion
22 noticed to all creditors.").

23 ¹³ The court discussed the "modified estate preservation" approach, the "estate
24 transformation" approach, the "estate termination" approach, and the "estate preservation"
25 approach. The Jones panel "affirmatively" declined to adopt the estate preservation approach,
26 657 F.3d at 928, and also declined to adopt any of the other three approaches. Id.

¹⁴ Although unstated in the Jones decision, the "election" referred to by the panel
presumably refers to Section 1322(b) which states that a Chapter 13 debtor "may" include
certain features in a proposed plan, including a provision for the vesting of property of the estate

1 elected not to include a contrary provision in her Chapter 13 plan, the Ninth Circuit concluded
2 that under Section 1327(b), the debtor “once again became the owner of her property at
3 confirmation, except as to those sums specifically dedicated to fulfillment of the plan.” Id.

4 In the present case, the Debtors elected to include Section 5.03 in all three of their
5 confirmed plans. Section 5.03 specifies both whether estate property would vest in the Debtors
6 as well as the extent to which estate property would vest in the Debtors. Under Jones, the
7 language of Section 5.03 controls and limits the vesting of estate property to “property of the
8 estate scheduled under §521.” Because the PI Claim was not scheduled under Section
9 521(a)(1)(B)(i) until May 23, 2014, neither the Debtors’ creditors nor the Chapter 13 Trustee
10 was provided notice that postpetition estate property would be excluded as a source of payment
11 under any of the Debtors’ proposed plans. Under these circumstances, the court concludes that
12 the PI Claim never vested in the Debtors.

13 This conclusion also is buttressed by the procedural record in the case. As previously
14 noted, Debtors’ proposed Plan #2 was confirmed by an order entered on December 18, 2009.
15 Thereafter, Debtors actively participated in postconfirmation matters in the case. In fact, on
16 November 17, 2010, Tyrone filed a letter in response to a motion for relief from stay (ECF No.
17 66) that had been brought in connection with a parcel of real property. (ECF No. 70). On
18 November 22, 2010, the Debtors’ bankruptcy counsel also filed a response to the same motion.
19 (ECF No. 71). On February 22, 2011, an order was entered approving an adequate protection
20 agreement that the Debtors had reached with the same creditor. (ECF No. 74).¹⁵

21 On August 22, 2011, the automobile accident occurred giving rise to the PI Claim. On
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23 as contemplated by Section 1327(b). 11 U.S.C. § 1322(b)(9).

24 ¹⁵ Debtors continue to be actively involved in their bankruptcy case. On June 5, 2014,
25 Debtors also submitted a letter in response to the Chapter 13 Trustee’s objection to their
26 exemptions (ECF No. 138) and on June 9, 2014, a separate response was filed by their
bankruptcy counsel. (ECF No. 139).

1 August 25, 2011, Elondia engaged the services of ASK. Debtors did not amend their personal
2 property Schedule “B” to disclose the PI Claim.¹⁶

3 On September 12, 2012, the Chapter 13 Trustee filed proposed Plan #3 which provided in
4 Section 1.09 for the Debtors to additionally make non-monthly plan payments from their 2010
5 and 2011 tax refunds.

6 On October 19, 2012, the Debtors filed an amendment to their income Schedule “I”
7 reflecting that they were unemployed as of July 2012, but made no amendment to their personal
8 property Schedule “B” to disclose the PI Claim.¹⁷ On October 19, 2012, Debtors also filed their
9 proposed Plan #4 which did not provide for them to make additional payments from their 2010
10 and 2011 tax refunds, and did not provide for any payments to be made from their PI Claim.
11 Instead, Section 1.08 of Plan #4 reduced the amount of the Debtors’ plan payment from \$651.00
12 per month from December 30, 2012 through December 30, 2013 under confirmed Plan #2, to
13 \$100.00 per month from November 2012 through November 2013.

14 On October 20, 2012, the Chapter 13 Trustee filed an objection to confirmation of
15 Debtors’ proposed Plan #4 limited to a verification of the Debtors’ income. The limited
16 objection made no inquiry as to the PI Claim because it was not disclosed. On October 21, 2012,
17 an order was entered confirming Plan #4.

18 On August 16, 2013, the Debtors’ first mention of Elondia’s PI Claim was made in the
19 ASK Employment Application.¹⁸ The ASK Employment Application stated that the PI Claim is
20 property of the Debtors’ bankruptcy estate. See ASK Employment Application at 2:4-9.

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22 ¹⁶ August 2011 was the thirty-fourth month after the Debtors commenced their Chapter
23 13 proceeding.

24 ¹⁷ October 2012 was the forty-eighth month after the Debtors commenced their Chapter
25 13 proceeding.

26 ¹⁸ August 2013 was the fifty-eighth month after the Debtors commenced their Chapter 13
proceeding.

1 Debtors' proposed special counsel attested to his belief that the PI Claim is property of the
2 bankruptcy estate. See Declaration in Support of Motion to Employ Special Counsel at ¶ 5.
3 (ECF No. 111). In spite of the filing of the ASK Employment Application, however, Debtors
4 still did not amend their personal property Schedule "B" to disclose the PI Claim.¹⁹

5 On this record, it is clear that the Debtors could have disclosed the PI Claim as early as
6 the thirty-fourth month of their Chapter 13 case, but they did not.²⁰ They also could have
7 disclosed the claim during the forty-eighth month when they submitted amended Plan #4, but
8 they did not.²¹ Debtors also could have scheduled the PI Claim during the fifty-eighth month
9 when they sought approval of special counsel, but they did not. In essence, the Debtors had
10 multiple opportunities to disclose the PI Claim in time sufficient for the Chapter 13 Trustee or
11 the holder of an allowed unsecured claim, see 11 U.S.C. § 1329(a)(1), to seek a modification of
12 Plan #4 to change the amount of the monthly payments in Section 1.08, or to specify a source of
13 non-monthly payments in Section 1.09. Not only did the Debtors have the opportunity to
14 disclose the PI Claim as a postpetition asset of their Chapter 13 estate, the court also concludes
15 that the Debtors were required to do so.

16 In Hamilton v. State Farm Fire & Casualty Co., 270 F.3d 778 (9th Cir. 2001), the Ninth
17 Circuit held that an individual Chapter 7 debtor who was aware that he had a potential claim

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19 ¹⁹ The ASK Employment Application was served by proposed special counsel on the
20 Debtors, their creditors, their bankruptcy counsel, and the Chapter 13 Trustee. (ECF No. 116).
21 There is no evidence in the record addressing whether special counsel discussed the filing of the
22 ASK Employment Application with the Debtors' bankruptcy counsel or any amendment to the
23 Debtors' schedules. There also is no evidence in the record suggesting that the Chapter 13
24 Trustee received any information of the existence of the PI Claim at any time prior to the filing
25 of the ASK Employment Application.

26 ²⁰ There is no evidence in the record addressing whether the Debtors were aware that the
PI Claim is an asset of their Chapter 13 estate or whether they informed their bankruptcy
counsel.

²¹ There is no evidence in the record addressing whether the Debtors' bankruptcy
counsel was aware of the existence of the PI Claim.

1 before bankruptcy, but who failed to schedule the claim, had a continuing duty to disclose the
2 claim through amending his schedules. 270 F.3d at 785. Because the potential claim was an
3 asset of the debtor’s bankruptcy estate, the court had no difficulty in applying equitable estoppel
4 principles to prevent the debtor from attempting to assert the claim after he received his
5 discharge. *Id.* at 785-86. Some courts have applied Hamilton in recognizing a continuing duty
6 of disclosure in Chapter 13 with respect to prebankruptcy claims. *See, e.g., Swendsen v. Ocwen*
7 *Loan Servicing, LLC*, 2014 WL 1155794 at *6 (E.D.Cal. Mar 21, 2014); *Balthrope v. Garcia-*
8 *Mitchell (In re Balthrope)*, 2010 WL 430840 at *2 (E.D.Cal. Feb. 1, 2010). In other words, a
9 continuing duty to disclose prebankruptcy claims, or any other property of the estate as of the
10 petition date, has been recognized in both Chapter 7 and Chapter 13 proceedings.

11 In Fridley v. Forsythe (In re Fridley), 380 B.R. 538 (B.A.P. 9th Cir. 2007), the
12 Bankruptcy Appellate Panel for this circuit described the Chapter 13 full payment discharge
13 process and the plan modification opportunity²² as a “race” pitting the debtor against his
14 creditors: the debtor seeks to complete his plan payments as soon as possible to obtain his
15 discharge before creditors can obtain a plan modification that might increase or extend plan
16 payments. 380 B.R. at 542. A debtor who does not disclose postpetition assets that are property
17 of the Chapter 13 estate essentially fixes the race by giving his creditors no reason to hurry to the
18 bankruptcy courthouse for a plan modification. Creditors certainly can obtain information from
19 a Chapter 13 debtor by regularly scheduling of periodic examinations pursuant to FRBP
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23 ²² Section 1328(a) provides that a Chapter 13 discharge shall be granted “as soon as
24 practicable after completion by the debtor of all payments under the plan . . .” Section 1329(a)
25 provides that any time after plan confirmation “but before the completion of payments under
26 such plan,” an allowed unsecured claimant may seek to modify the confirmed plan to “increase .
. . the amount of payments on claims” and to “extend . . . the time of such payments.” 11 U.S.C.
§§ 1329(a)(1 and 2) (Emphasis added).

1 2004(a),²³ but it is the Chapter 13 debtor who voluntarily, and only voluntarily, seeks relief
2 through bankruptcy. Giving a Chapter 13 debtor an incentive to withhold information
3 concerning property of the estate is entirely inconsistent with the policy of providing bankruptcy
4 relief to honest but unfortunate individuals. Accordingly, the court concludes that the burden of
5 ascertaining and disclosing the existence of postpetition property of the estate²⁴ rests with the
6 Chapter 13 debtor.²⁵

7 Because the Contested Funds are proceeds of the PI Claim, those funds also constitute
8 property of the Chapter 13 estate. The Chapter 13 Trustee seeks authority to distribute the
9 Contested Funds to general unsecured creditors, even though the Debtors maintain that they
10 completed the monthly payments required by their confirmed Plan #4. As previously discussed,
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12 ²³ FRBP 2004(b) provides that “The examination of any entity under this rule...may
13 relate only to the acts, conduct, or property or to the liabilities and financial condition of the
14 debtor, or to any matter which may affect the administration of the debtor’s estate . . .” An
15 examination of a Chapter 13 debtor to ascertain whether any property of the estate has been
16 received after plan confirmation would be permitted.

17 ²⁴ The court does not address whether a minimum value exists for required disclosures of
18 postpetition assets in Chapter 13 cases. In this case, the PI Claim settled for \$130,000, leaving
19 \$24,298.33 as the Contested Funds after deducting the professional fees, medical claims and
20 Elondia’s exemption amount. The claim register maintained in this case reflects the filing of
21 general unsecured claims totaling approximately \$70,000. Disbursement of the Contested
22 Funds, as well as any monthly plan payments held by the Chapter 13 Trustee, would result in a
23 significant distribution to general unsecured creditors.

24 ²⁵ By comparison, the debtor in possession in a Chapter 11 proceeding is required to file
25 monthly operating reports that include a balance sheet setting forth the assets and liabilities of
26 the debtor. The reporting requirement applies to all Chapter 11 cases, and includes both small
businesses and individuals. In the latter cases, such reports are required to be filed until a plan of
reorganization is confirmed and a final decree is entered. For individual Chapter 11 debtors, a
final decree is not entered until entry of discharge upon completion of plan payments. The asset
portion of the monthly report requires both current assets and long term assets to be disclosed
along with their estimated market value and any claim of exemption. Unlike the liabilities
section of the balance sheet, the asset portion does not distinguish between assets acquired
prepetition and those acquired postpetition. Thus, on a monthly basis, an individual debtor in
Chapter 11 is required to voluntarily disclose all of his or her assets even if the individual debtor
does not acquire additional assets after the case is commenced.

1 however, the Debtors confirmed their Plan #4 without disclosing the existence of the PI Claim
2 and without giving the Chapter 13 Trustee or allowed unsecured claimants the opportunity to
3 object to the omission of the PI Claim in Section 1.09 as a non-monthly source of plan payments.
4 The Chapter 13 Trustee maintains, and the court agrees, that Section 105(a) of the Code
5 authorizes his request.

6 Section 105(a) provides, in pertinent part, that the court “may issue any order, process, or
7 judgment that is necessary or appropriate to carry out the provisions of this title.” Because the
8 Contested Funds are property of the Chapter 13 estate that should have been included in the
9 confirmed Plan #4 but for the Debtors’ failure to disclose, the court concludes that it is
10 appropriate to require the funds to be distributed to unsecured creditors.

11 **IT IS THEREFORE ORDERED** that the Trustee’s Motion to Allow Disbursement of
12 Personal Injury Settlement Proceeds brought by Rick A. Yarnall, Docket No. 157, be, and the
13 same hereby is, **GRANTED**.²⁶

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15 Notice and Copies sent through:

16 CM/ECF ELECTRONIC NOTICING AND/OR
17 BNC MAILING MATRIX

18 and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:
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21 ²⁶ The unfortunate reality is that after the Chapter 13 case was commenced, the Debtors
22 lost their jobs and lost all of their real property assets, including their residence. As the Debtors
23 have not received their discharge and have resided in California since July 26, 2013, they
24 perhaps could have voluntarily dismissed their Chapter 13 proceeding in Nevada pursuant to
25 Section 1307(b), and simply filed a Chapter 7 petition in California. The bankruptcy exemptions
26 available to a California resident includes a “wildcard” exemption of up to \$25,340.00 in any
property, see Cal.CodeCiv.Proc. §§ 703.140(b)(1) and 703.140(b)(5), thereby exceeding the
amount of the Contested Funds. Alternatively, as they already had paid the liquidation value of
their non-exempt assets at the time Plan #4 was confirmed, see note 5, supra, the Debtors might
have considered seeking a hardship discharge under Section 1328(b) because they were both
unemployed.

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4 WEST COVINA, CA 91791

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