

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 25.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–24, attempting to first address the items in which short argument is anticipated.

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

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1. [17-28206](#)-E-13 EDWARD/JANET CASARINO **OBJECTION TO CONFIRMATION OF
DPC-1 Chad Johnson PLAN BY DAVID P. CUSICK
2-1-18 [41]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 1, 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.

David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that Edward Casarino and Janet Casarino (“Debtor”) may not be able to make the payments under the plan because income and expenses are unreliable.

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 First Meeting of Creditors that \$500.00 listed on Schedule I as rent may not be reliable. Debtor admitted that a niece, two daughters, and the niece’s fiancé live with Debtor, but neither the niece or the fiancé are employed. The Chapter 13 Trustee implies that the tenants may not be paying rent—or may not be paying \$500.00 monthly.

Further, Debtor admitted that the payments toward homeowner association dues, \$382.00, are not current. 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 1, 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.

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

- A. Shannon Clarke (“Debtor”) has made no plan payments, and
- B. Debtor cannot make the payments under the Plan.

The Chapter 13 Trustee’s objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$469.00 delinquent in plan payments, which represents one month of the \$469.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor provides for a household contribution of \$800.00 per month from an unidentified source, but has not provided any evidence to the Chapter 13 Trustee or to the court. 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.

3.

18-20607-E-13
RJ-1

MELISSA FAUS
Richard Jare

MOTION TO VALUE COLLATERAL OF
CAR FINANCE CAPITAL
2-13-18 [21]

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

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

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

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

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

The Motion to Value Collateral and Secured Claim of Car Finance Capital ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$6,400.00.

The Motion filed by Melissa Faus ("Debtor") to value the secured claim of Car Finance Capital ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Infiniti G35 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on February 16, 2018. Dckt. 26. He notes that the petition lists the Vehicle as needing new tires and brakes and repairs for a window, chipped paint, a blemished wheel, and electronics. He also notes that no proof of claim has been filed for the claim.

RULING

The lien on the Vehicle's title secures a purchase-money loan incurred on May 14, 2014 (as alleged in Debtor's Declaration, Dckt. 23), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,187.47. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$6,400.00, the value of the collateral. *See* 11 U.S.C. § 506(a). 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 Melissa Faus ("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 Car Finance Capital ("Creditor") secured by an asset described as 2006 Infiniti G35 ("Vehicle") is determined to be a secured claim in the amount of \$6,400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2018. By the court’s calculation, 42 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

Enrique Garcia (“Debtor”) seeks confirmation of the Amended Plan because an extension of the Plan from thirty-six months to sixty months will allow Debtor to repay creditors and keep his monthly payments affordable. Dckt. 33. The Amended Plan requires one payment of \$10,000.00, two monthly payments of \$3,480.00, and fifty-seven payments of \$3,960.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 29, 2018. Dckt. 44. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s Amended Plan provides that US Bank/Caliber will be paid by the Chapter 13 Trustee \$2,680.44 per month in post-petition payments. On November 9, 2017, US Bank filed Proof of Claim 3, indicating monthly payments of \$3,053.64. These payments are \$373.20 higher than reported. Debtor’s plan payment must be at least \$4,382.38 per month to pay claims as proposed in sixty months. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has supplied insufficient information relating to 45716 Palm Lane, Lancaster, California, to assist the Chapter 13 Trustee in determining the value of the property. Debtor did not disclose any interest in the property. The Chapter 13 Trustee does not oppose confirmation on this basis, though, because he does not believe Debtor has an interest in the property.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 47. Debtor states that the higher amount is due to an impound account set up to pay property taxes. Debtor also argues that Schedule J shows an ability to pay the property taxes as budgeted.

FEBRUARY 13, 2018 HEARING

At the hearing, the court continued the matter to allow Debtor to correct the amount of the mortgage payment. Dckt. 50.

RULING

No amendment or changes have been proposed by Debtor, and no new plan has been filed.

The Chapter 13 Trustee's Opposition focuses on the ability to pay the higher plan amount necessary to pay the increased secured claim. Debtor states that this is for a tax impound account for this creditor. Looking at Schedule J, Debtor provides for a \$373.21 per month property tax payment. Dckt. 1 at 28. The court reads Debtor's Response to be that this monthly payment goes away, increasing projected disposable income to fund the Plan by \$327.21 per month. Though the increase for the tax impound being \$50 per month more, the court is confident that Debtor could reduce the monthly entertainment expense by \$50 per month to cover this and increase the Plan payment by \$373.21 per month.

The Amended Plan, as amended to increase the monthly plan payment to \$4,333.21 in the **xxxth month of the Plan**, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Enrique Garcia ("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 granted, and the proposed Amended Chapter 13 Plan filed on January 2, 2018, as amended at the hearing to increase the monthly plan payment to \$4,333.21 in the **xxxth month of the Plan**, is confirmed. Counsel for Debtor shall prepare and forward to David Cusick ("the Chapter 13 Trustee") a proposed order confirming the

Plan, which order shall state the above amendment to the Plan, and which upon approval by the Chapter 13 Trustee shall be lodged with the court.

5. 16-25419-E-13 ANTHONY/AMALIA AITKEN MOTION TO MODIFY PLAN
DBL-4 Bruce Dwigginns 1-16-18 [77]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 16, 2018. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Anthony Aitken and Amalia Aitken (“Debtor”) seek confirmation of the Modified Plan because Debtor’s income has increased. Dckt. 79. The Modified Plan proposes plan payments of \$2,175.00 for months seventeen through sixty, with a 0.00% dividend to general unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 12, 2018. Dckt. 85. He argues that Debtor has failed to plead with particularity the grounds upon which the requested relief is based. He also states that the Second Modified Plan does not include a description of any additional provision of the plan that differs from the form plan.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor provides that he started a new job that provides more income but has not filed a supplemental Schedules I and J to reflect the increase in plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

RULING

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Anthony Aitken and Amalia Aitken ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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 January 16, 2018. By the court’s calculation, 42 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

David Trexler and Kimberly Trexler (“Debtor”) seek confirmation of the Amended Plan because they had to amend their payments to account for a “statutory deposit” of \$875.61 imposed by “PGE.” Dckt. 33. The Amended Plan proposes payments of \$5,578.00 from September 2017 through December 2017 and then \$2,465.00 from January 2018 through the end of the plan term. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 2, 2018. Dckt. 38

He argues that Debtor has \$765.00 less in child support expenses and could pay more to unsecured claims than 0%. If the current budget is accurate and should remain accurate for the plan term, then he argues that Debtor can explain in a declaration whether the \$765.00 child support expense will continue, indicating the age of the child or children involved.

RULING

The Chapter 13 Trustee has raised a ground that he raised before showing that Debtor can afford to provide more disposable income apparently, which when not provided violates the liquidation analysis. The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by David Trexler and Kimberly Trexler (“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, and the proposed Chapter 13 Plan is not confirmed.

7. [17-25221](#)-E-13 TOMMIE RICHARDSON
PGM-2 Peter Macaluso

**OBJECTION TO CLAIM OF SENECA
LEANDRO VIEW, LLC, CLAIM NUMBER
7-1
1-12-18 [52]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 12, 2018. By the court’s calculation, 46 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7-1 of Seneca Leandro View LLC is set for an evidentiary hearing at X:XX x.m. on xxxxxxxxxxxx, 2018.

Tommie Richardson, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of Seneca Leandro View LLC (“Creditor”), Proof of Claim No. 7-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$422,600.00.

Objector asserts that there is no contract, security interest, or lien recording attached with the Proof of Claim. Additionally, Objector argues that there is no evidence of an equitable lien for the Claim and that there is no evidence of any actual amount owed to Creditor.

CREDITOR’S RESPONSE

Creditor filed a Response on February 13, 2018. Dckt. 68. Creditor argues that under *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, objecting that a claim lacks prima facie validity is no longer a valid basis. Additionally, Creditor argues that there is adequate information in the Claim itself to be facially valid.

Creditor argues that Objector has never contacted it asking for information about the Claim. Creditor argues that a purchase agreement for the Claim is presumed to in Objector's files.

Further, Creditor counters Objector's arguments by noting that Objector has not actually denied that he entered into a contract with Creditor, that he does not have a copy of the relevant document, or that he was not notified of \$163,000.00 in excess proceeds being held by a foreclosure trustee.

The attached Declaration of Alvin Cox incorporates the underlying purchase agreement that appears to be the basis for the Claim. *See* Exhibit A, Dckt. 71.

Subsequently, Creditor submitted a Supplemental Response on February 13, 2018, indicating that it had filed an amended claim. Dckt. 69. That Amended Proof of Claim 7-2 does not actually contain the attached documents supporting its claim. Instead, it incorporates the exhibits that have been filed in opposition to this objection. *See* Dckt. 71.

OBJECTOR'S REPLY

Objector filed a Reply on February 20, 2018. Dckt. 73. Objector asserts the disputed debt arises from an attempted sale of property, in which escrow was opened but not completed prior to the completed Notice of Default and election to sell under a deed of trust and notice to sell.

Objector argues that there is a dispute as to whether Objector owes \$15,000.00 received from the purchase agreement. Objector argues that there is a legitimate dispute as to what party is liable and requests that the court set this matter for an evidentiary hearing.

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).

While Creditor appears to have resolved the initial problems raised by Objector by filing a response with information about the purchase agreement and by attaching that agreement, Objector's arguments have morphed into a full-on dispute with Creditor about what party to the agreement owes what amount.

Amended Proof of Claim

Creditor filed its Amended Proof of Claim No. 7 on February 13, 2018. The amendment is nothing more than adding a page telling creditors and the court,

“We hereby incorporate creditor's exhibits in response to PGM 2 as if fully set forth herein.”

Amended Proof of Claim No. 7, p. 4. Creditor appears unwilling to comply with Federal Rule of Bankruptcy Procedure 3001 (emphasis added) which requires:

c) Supporting information.

(1) Claim based on a writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, **a copy of the writing shall be filed with the proof of claim.** If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional requirements in an individual debtor case; sanctions for failure to comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, **a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.**

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) **If the holder of a claim fails to provide any information required by this subdivision (c),** the court may, after notice and hearing, take either or both of the following actions:

(i) **preclude the holder from presenting the omitted information, in any form,** as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) **award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.**

(3) Claim Based on an Open-End or Revolving Consumer Credit Agreement.

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor’s real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

- (i) the name of the entity from whom the creditor purchased the account;
- (ii) the name of the entity to whom the debt was owed at the time of an account holder’s last transaction on the account;
- (iii) the date of an account holder’s last transaction;
- (iv) the date of the last payment on the account; and
- (v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

(d) Evidence of perfection of security interest. **If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.**

Merely telling the court to go and do Creditor’s legal work and assemble the required documents does not a sufficient proof of claim make.

The claim, in litigating this Objection, is being asserted based on no written documentation. See Amended Proof of Claim No. 7. In connection with this Contested Matter, Creditor has felt the need to provide the court with a 126 page exhibit of written documents. However, none of these are included with Proof of Claim No. 7.

Objector has requested that this matter be set for an evidentiary hearing, and upon review of the pleadings, the court agrees that a further hearing for the parties to clearly articulate why the Claim is or is not valid is warranted. This matter is set for an evidentiary hearing at 9:30 a.m. on **xxxxxxx**, 2018.

The court sets the following schedule for an evidentiary hearing on the Objection to Proof of Claim:

- A Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

- B. On or before **xxxx, 201x**, the Parties shall each file with the court and serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).
- C. Movant, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **xxxx, 201x**.
- D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **xxxx, 201x**.
- E. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **xxxx, 201x**.
- F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **xxxx, 201x**.
- G. The Evidentiary Hearing shall be conducted at **xx:xx x.m. on xxxx, 201x**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2018. By the court’s calculation, 54 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Yvonne Johnson (“Debtor”) seeks confirmation of the Amended Plan to address prior objections that had been raised. Dckt. 44. The Amended Plan proposes payments of \$970.25 for sixty months with a 0.00% dividend to general unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 12, 2018. Dckt. 60

The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Class 1 claims require the Chapter 13 Trustee to pay both post-petition payments on Class 1

claims and the monthly dividends on account of Class 1 arrearage claims. Debtor proposes a plan payment of \$970.25; however the mortgage payments amount to \$1,279.04 and an arrearage dividend of \$866.08. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan payments must be no less than \$2,698.20 to pay the claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

On Amended Schedule I, Debtor states having net monthly income of \$5,017.45 from her business. However, Debtor does not provide the required gross income and expense information that results in the \$5,017.45 in net monthly income from the business. Dckt. 48. Debtor also states that there is \$300 in contribution income from "new husband." However, the Amended Schedule I does not show the monthly income of Debtor's spouse.

The latest Schedule J filed by Debtor lists monthly expenses of \$3,051.61. Dckt. 28 at 18-19. The expenses do not include any amount to pay the post-petition currently monthly mortgage payment (which could have been transferred into the plan payment to fund the Class 1 required payment). Schedule J does income estimated tax payments that can be applied to Debtor's \$60,000 a year in net income.

The Chapter 13 Trustee notes that the proposed Amended Plan fails to account for \$9,829.20 paid through January 2018, which has the effect of putting Debtor ahead in plan payments.

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, which total \$39,130.80, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$2,265.84. Debtor fails to pay all disposable income into the plan because Debtor does not account for an additional \$300.00 in income from her spouse now living in the house. Thus, the court may not approve the Plan.

Debtor proposes to pay interest on the entire pre-petition arrears claim of Select Portfolio Servicing in Class 1. The Chapter 13 Trustee asserts, however, that Creditor is entitled to interest on principal only, not interest on interest. Creditor appears entitled to interest on no more than \$12,011.52 of pre-petition arrears claim under 11 U.S.C. § 1322(e).

Procedurally, Debtor failed to use a Docket Control Number to identify this Motion, violating Local Bankruptcy Rule 9014-1(c).

RULING

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Yvonne Johnson (“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.

9.	<u>17-25234</u> -E-13 DPC-2	YVONNE JOHNSON Stacie Power	CONTINUED MOTION TO DISMISS CASE 12-4-17 [37]
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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—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 December 4, 2017. By the court’s calculation, 44 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 XXXXXXXXXX.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Yvonne Johnson (“Debtor”) is \$1,318.02 delinquent in plan payments, which represents less than one month of the \$1,965.84 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee’s Motion argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on October 24, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 49. Debtor states that an Amended Plan has been filed and set for hearing and that it cures the delinquency.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on January 3, 2018. Dckts. 41, 45. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 41, 44. 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.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 56. The Chapter 13 Trustee argues that the Amended Plan uses the court’s prior form version and is now outdated. He notes that Debtor is no longer delinquent under the Amended Plan, but because it is not in line with the current plan form, the Chapter 13 Trustee requests that this hearing be continued to the confirmation hearing date.

JANUARY 17, 2018 HEARING

At the hearing, the court announced that the hearing would be continued in light of Debtor filing an amended plan on the prior plan form. Dckt. 58. The court continued the hearing to 3:00 p.m. on February 27, 2018. Dckt. 59.

RULING

Upon reviewing Debtor’s proposed amended plan, the court has denied confirmation because there are substantial problems, such as Debtor not providing all disposable income, not proposing to pay the correct amount to cure arrears, failing the liquidation analysis, and not being able to complete the plan with sixty months.

The Chapter 13 Trustee has noted that Debtor is not delinquent under the proposed amended plan, but she was delinquent under the original plan. At the hearing, the Chapter 13 Trustee reported that Debtor **is / is not** delinquent in plan payments.

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 **xxxxxx**.

10. [17-24045-E-13](#) **PAULINE ABBOTT** **MOTION TO CONFIRM PLAN**
[HDR-5](#) **Harry Roth** **1-9-18 [95]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court’s calculation, 49 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Pauline Abbott (“Debtor”) seeks confirmation of the Second Amended Plan because this Plan addresses David Cusick’s (“the Chapter 13 Trustee”) objections to the First Amended Plan. Dckt. 97. The Second Amended Plan proposes to use the proceeds from a sale of non-exempt property for a lump sum payment and to extend the Plan to forty-two months to accommodate the liquidation test. Additionally, the

Plan identifies Debtor's exempt Thrift Savings Plan as a fund source to meet the Plan Payments. Dckt. 99.

The Second Amended Plan calls for two months of a \$450.00 Plan Payment, then \$440.00 per month for five months, then \$375.00 per month for thirty-five months with a \$7,886.86 lump sum payment in the tenth month of the plan. The Plan shall complete in forty-two months. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on February 5, 2018. Dckt. 107. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Amended Schedule J reflects a monthly net income of \$306.98 per month, yet the proposed Plan requires Plan Payments of \$450.00 for two months, \$440.00 for five months, and \$375.00 for thirty-five months. Dckt. 99. The Plan Payments exceed Debtor's monthly net income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's Motion to Confirm Amended Plan conflicts with the proposed Plan. The Plan proposes to pay the unsecured claims a five-percent dividend, even though the Motion states that Debtor's "non-exempt property would be insufficient to pay 100% to unsecured creditors, but unsecured creditors are proposed to receive 100% of allowed claims." Dckt. 95.

RULING

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Pauline Abbott ("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.

11. [17-27346-E-13](#)
SS-3

KENNETH TABOR
Scott Shumaker

CONTINUED AMENDED MOTION TO
CONFIRM PLAN
12-11-17 [37]

**APPEARANCE OF KRISTIN ZILBERSTEIN, ESQ.
ATTORNEY FOR US BANK TRUST, NA TRUST
REQUIRED FOR HEARING**

TELEPHONIC APPEARANCE PERMITTED

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, and Office of the United States Trustee on December 11, 2017. By the court’s calculation, 43 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXXXXXXXXXXX.

Kenneth Tabor (“Debtor”) seeks confirmation of the Amended Plan because he can now afford to make monthly plan payments as well as his bills. Dckt. 38 at 2:15–17. The Amended Plan proposes monthly payments of \$3,190.00 for forty months with a 100% dividend to general unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on January 9, 2018. Dckt. 55. The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Two years of tax returns, and
- B. A written description of assets, or written statement that no such documentation exists.

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). 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.

Finally, the Chapter 13 Trustee notes that the first Meeting of Creditors was held on January 4, 2018, and continued to February 1, 2018. The Chapter 13 Trustee did not receive all of Debtor’s business documents and tax returns in time to review them prior to the hearing. Debtor has not yet been fully examined.

The Chapter 13 Trustee requests that the hearing on the Objection be continued to 3:00 p.m. on February 27, 2018.

CREDITOR'S OPPOSITION

US Bank Trust, N.A., as Trustee of the Bungalow Series F Trust (“Creditor”) filed an Opposition on January 9, 2018. Dckt. 58. Creditor argues that Debtor’s Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor’s principal residence. Creditor asserts a secured claim against the property commonly known as 10161 Major Road, Yuba City,, California. Creditor asserts that Debtor is not the borrower on the property. Debtor’s Schedules indicate that this is Debtor’s primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor’s residence.

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 \$55,151.23 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.

JANUARY 23, 2018 HEARING

At the hearing, the parties requested a continuance to address the issues in this case. Dckt. 62. The court continued the hearing to 3:00 p.m. on February 27, 2018.

RULING

No supplemental pleadings have been filed since the prior hearing, and Debtor has not proposed a new plan or any amendments to resolve the issues that have been raised.

There appear to be problems with the Amended Plan regarding how it modifies a debt secured by Debtor's principal residence and regarding the amount of plan payments needed to satisfy Creditor's arrears. Debtor has not responded with any proposed amendments to resolve the problems with the current plan, and cause exists to deny confirmation.

Here, using Creditor's computation of the claim amount to be \$101,855.31, Debtor seeks to pay the claim in full over the forty-four months of the Plan. At the proposed 3% and amortizing it over forty-eight months (for ease of computation) using the Microsoft Excel Loan Amortization Calculator, the monthly payment would be \$2,254.60.

Creditor states that the arrearage to be cured in \$55,151.23. For a sixty month plan, Creditor computes this arrearage amount to require a \$919.00 payment. ($\$55,151.23/60 = \919.187)

The Opposition does not state the current unmodified post-petition monthly payment amount under the Note. No declaration or other evidence is filed by Creditor opposing the motion. Creditor has chosen not to file a proof of claim in this case stating the amount of its claim, the amount of the arrearage, and the amount of the current monthly payment. All that Creditor has chosen to do is have its attorneys make a fragmented argument, asserting facts for which Creditors has failed to provide evidence.

Creditor's attorneys argue that the original loan was in the amount of \$98,000.00, with the note dating back to January 1999.

In one of Debtor's prior bankruptcy cases, 16-21854 filed on March 25, 2016, Proof of Claim No. 1 was filed for this obligation. This Proof of Claim was filed by Debtor's counsel. The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. As of March 25, 2016, it was stated that the payoff amount for this obligation was \$95,895.84. The actual interest rate is stated to be 6.875%. On October 17, 2016, Creditor's predecessor in interest filed a Notice of Post Petition Mortgage Fees, Expenses and Charges in the prior case, adopting the Proof of Claim filed by Debtor.

In the prior case Creditor's predecessor in interest filed a motion for relief from the stay, which was supported by Exhibits, which include a copy of the Note. 16-28154; Exhibit A, Dckt. 78. The stated term of the Note is 30 years. Using the Microsoft Excel Loan Amortization Calculator, the regular monthly

payment for a \$98,000.00 loan, amortized over 30 years at 6.875% interest, computes a regular post-petition current monthly payment of \$643.97.

Debtor proposes a monthly payment of \$2,604.00. This is sufficient to make the regular monthly payment of \$643.97, the arrearage payment of \$919.00, and a payment accelerating the reduction of principal by \$1,041.03 a month. Using the Excel Calculator, a monthly payment of \$1,684.00 on the payment of the non-pre-petition default loan balance of \$46,704.08, the \$1,684.00 will repay that balance in two and one-half (2 ½) years. Continuing that payment with all \$2,604.00 being applied to the arrearage after two and one-half years, shows that the arrearage of 55,151.23 will be paid off by the forty-first month of the Plan:

Starting Arrearage Balance.....	\$55,151.23
Two and One-Half Years Pmts of \$919.00.....	(\$27,570.00)

Arrearage Balance After Two and One-Half Years.....	\$27,981.23
\$2,604 Per Month Payments for Eleven Months.....	(28,644.00)
	=====
Excess to Fund Payment of Creditor Claim Over Forty-One Months of Plan	\$ 662.77

While the Plan purporting to reduce the interest on the loan to 3% would modify the claim, Debtor has sufficiently funded the Plan to pay Creditor in full on its obligation, including all of the pre-petition arrearage in only forty-one months.

Thus, it appears that Debtor can not only provide for the cure of the arrearage, Debtor will be able to pay this obligation in full over the term of the Plan. Presumably, Creditor and Creditor’s counsel are pleased to receive such payment.

At the hearing, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Kenneth Tabor (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on January 22, 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. Robert DeForrest and Mary DeForrest (“Debtor”) have not filed tax returns for the four-year period prior to filing the Petition, specifically 2014, 2015, and 2016, as well as failing to file tax returns for 2011, 2012, and 2013.
- B. Debtor’s proposed Plan will complete in sixty-nine months, exceeding the sixty month maximum allowed.

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

A claim filed by the Internal Revenue Service indicates that Debtor has not filed a tax returns for the 2011, 2012, 2013, 2014, 2015, and 2016 tax years. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-nine months due to the Internal Revenue Service claiming \$18,463.73 in priority taxes while Debtor lists the claim as being \$1,989.40. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

13. [17-27449-E-13](#) **BONITA MELENDEZ**
DPC-2 **Rick Morin**

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
1-5-18 [24]

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on January 5, 2018. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is XXXXXXXXXXXX.

David Cusick ("the Chapter 13 Trustee") objects to Bonita Melendez's ("Debtor") exemption for a personal injury claim in the amount of \$72,571.35 on the grounds that it was undisclosed and was property of the estate in Debtor's Chapter 7 case (No. 14-28030).

The Chapter 13 Trustee argues that the exemption may not be claimed properly in this case because it is not in the current Chapter 13 estate. He states that a description of the property should either include that it is subject to the interest of the Chapter 7 estate or that Debtor is claiming an interest in any residual or remainder of the property once it is administered or abandoned in the related Chapter 7 case.

DEBTOR'S RESPONSE

Debtor filed a Response on February 13, 2018. Dckt. 41. Debtor states that the exemption had been listed out of caution but that Debtor heeds the Chapter 13 Trustee's objection. Accordingly, Debtor has amended her schedules to clarify that the asset is subject to her prior Chapter 7 case.

RULING

Amended Schedules A/B & C were filed on February 12, 2018. Dckt. 39. Amended Schedule A/B lists the property as:

Personal injury claim for mesh injury. Estimated settlement value of \$72,571.35.
Subject to claim in prior Chapter 7 bankruptcy. Listed in abundance of caution.

Amended Schedule C claims an exemption in the settlement funds in the amount of \$72,571.35 pursuant to California Code of Civil Procedure § 704.140.

Debtor appears to agree with the Chapter 13 Trustee that the settlement funds are subject to Debtor’s prior Chapter 7 case. With the amendments to the schedules, Debtor has agreed with and resolved the Chapter 13 Trustee’s Objection.

The Objection is **XXXXXXXXXXXXXXXXXXXXXX**.

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

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

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

IT IS ORDERED that Objection is **XXXXXXXXXXXXXXXXXXXXXX**.

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, and Office of the United States Trustee on January 3, 2018. By the court’s calculation, 55 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is *granted*.

Douglas Lutes and Valerie Lutes (“Debtor”) seek confirmation of the Amended Plan because Debtor has returned to work and is no longer on disability. Dckt. 53. The Amended Plan requires Debtor to have paid \$7,050.00 through December 2017 and then \$3,900.00 per month for fifty-five months beginning January 2018. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 6, 2018. Dckt. 63.

The Chapter 13 Trustee asserts that Debtor is \$3,900.00 delinquent in plan payments, which represents one month of the \$3,900.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee also notes that Section 7 of Debtor's Amended Plan shows that Debtor will seek a loan modification on the first mortgage of Wells Fargo Bank ("Creditor") and proposes \$1,200 per month for an adequate protection payment. While the Chapter 13 Trustee does not oppose this treatment, the Chapter 13 Trustee indicates that, as of the time of filing his Opposition, Creditor had time remaining to object to confirmation of the Plan. Creditor did not file an Objection to Confirmation.

DEBTOR'S REPLY

Debtor filed a Reply on February 20, 2018. Dckt. 66. Debtor states that the delinquency has been cured and that plan payments are current through January 2018.

RULING

At the hearing, the Chapter 13 Trustee **confirmed that the delinquency has been cured. The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.**

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Douglas Lutes and Valerie Lutes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **granted**, and Debtor's Amended Chapter 13 Plan filed on January 3, 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.

15. [17-26064-E-13](#)
PGM-4

MARTIN/MARIA ORTEGA
Peter Macaluso

CONTINUED MOTION TO CONFIRM
PLAN
12-26-17 [76]

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

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 December 26, 2017. By the court’s calculation, 49 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

Martin Ortega and Maria Ortega (“Debtor”) seek confirmation of the Amended Plan because they thought that the David Cusick (“the Chapter 13 Trustee”) would pay the balance on car payments after a car was sold without court permission. Dckt. 78. The Amended Plan calls for \$5,150.00 paid in through December 2017, with plan payments of \$2,545.00 for fifty-seven months through January 2018. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on January 19, 2018. Dckt. 85. The Chapter 13 Trustee notes that his objection in Debtor’s prior case (No. 15-27210) was because Debtor had attempted to sell property of the estate without court permission. He states now that he has received subsequent e-mails from the purported buyer relating to the purchase of Debtor’s vehicle.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2018. Dckt. 90. Debtor states that they have no opposition to including language in the order confirming “that upon payoff of said vehicle, and as a condition of discharge as to these ‘pro per’ creditors, that title be transferred within 30 days of notice thereof.” *Id.* at 2:8–11.

FEBRUARY 13, 2018 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 27, 2018, to allow Debtor supplement the record with a declaration. Dckt. 94.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on February 12, 2018. Dckt. 92. Debtor states that a 2005 Lincoln was sold for \$4,600.00. From the proceeds, Debtor gave \$3,600.00 to the Chapter 13 Trustee and retained the remaining \$1,000.00. Debtor states that they did not get permission to sell because they did not know that they needed permission.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on February 20, 2018. Dckt. 95. He states that a US Bank checking account listed on Schedule B shows it containing \$1,000.00 at the time of filing. The Chapter 13 Trustee cannot determine if Debtor has that balance still because Schedule C exempts \$750.00.

RULING

In this case, Debtor presents the court with quite a challenge. Debtor's prior Chapter 13 case was not filed and prosecuted in *pro se*, but with Debtor represented by the same counsel as in this case. 15-27210; Petition, Dckt. 1. That case was dismissed due to Debtor defaulting in the Plan payments in that case. *Id.*; Notice of Default, Order; Dckts. 56, 59.

In the prior case Debtor paid \$13,670.00 into their Plan, of which \$3,000 (22%) was paid to Debtor's counsel and \$896.61 (6.5%) was paid to the Chapter 13 Trustee. *Id.*; Trustee's Final Report, Dckt. 62 at 2. No monies were disbursed to creditors holding general unsecured claims. *Id.* at 2–3. \$9,773.39 was paid to two creditors having secured claims (the Lincoln and the Passat secured claims). *Id.*; Final Report, Dckt. at 3, and Chapter 13 Plan, Dckt. 42 at 3.

The Chapter 13 Trustee's Final Report in the prior case states that no disbursements were made on unsecured claims. *Id.*, Final Report, Dckt. 62 at 2–3.

The Chapter 13 Trustee's Notice of Default filed in the prior case includes a Notice of Receipts. *Id.*, Dckt. 56 at 3–4. The Notice of Receipts shows a \$3,600.00 payment on January 12, 2017, which is in addition to the normal January 2017 payment.

Debtor's assertion that the \$3,600.00 was disbursed to creditors holding general unsecured claims in the prior case is inaccurate. Reply ¶ 3, Dckt. 90. Other than the Chapter 13 Trustee fees of only \$896.61, all of the money went to pay either Debtor's secured claims or Debtor's counsel. 15-27210; Chapter 13 Trustee's Final Report, Dckt. 62 at 2-4.

The Wells Fargo Bank, N.A. claim filed in this case for which the Lincoln is the collateral, Proof of Claim 3, is in the amount of \$2,488.94. In the prior bankruptcy case, Wells Fargo Bank, N.A. filed a proof of claim for this same debt, secured by the 2005 Lincoln, with said claim being \$4,357.65. 15-27210, Proof of Claim 4.

In the prior case, Debtor's payments were \$90.00 per month to Wells Fargo Bank, N.A. In that case, the Chapter 13 Trustee reports that he made \$2,324.90 in principal payments to the bank. While in the general magnitude of amount, those do not quite line up but are consistent.

Debtor's Plan proposes to pay wells Fargo Bank, N.A. for a car Debtor claims to have sold. Debtor has taken at least \$1,000.00 of the proceeds from the unauthorized sale and diverted them around the Plan. In substance, Debtor is asking creditors to pay off the car loan, have a portion of the proceeds from the unauthorized sale having accelerated the pay down of the obligation on Debtor's other car Debtor is keeping, and let Debtor keep the extra thousand dollars, diverting all of those monies away from creditors holding general unsecured claims.

Debtor's offer to withhold transferring title until paying more money on his secured claims does not address the ills created by the unauthorized sale and Debtor retaining a portion of the sale proceeds.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Martin Ortega and Maria Ortega ("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.

16. [12-31671-E-13](#)
DPC-2

CHRISTIAN NEWMAN
Peter Macaluso

MOTION TO DETERMINE FINAL
CURE AND MORTGAGE PAYMENT
RULE 3002.1
1-11-18 [\[285\]](#)

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, Creditor, and Office of the United States Trustee on January 11, 2018. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Determine Final Cure and Mortgage Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor's claim had been cured and payments on the obligation were current as of the end of the Plan, July 31, 2017 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

David Cusick ("the Chapter 13 Trustee") moves for the court to determine the final cure and payment on a mortgage pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h). On December 11, 2017, the Chapter 13 Trustee filed a Notice of Final Cure Payment for Americas Servicing Company. Dckt. 283. US Bank National Association, as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1, ("Creditor") filed a Response to the Notice stating that pre-petition default payments had been made in full but that it was owed \$7,792.43 in post-petition payments.

The Chapter 13 Trustee disagrees with Creditor's assertion that its claim has not been cured. In support of that disagreement, the Chapter 13 provides an accounting for all payments being made through September 2017. *See* Exhibits A & B, Dckt. 290. The Chapter 13 Trustee argues that Creditor's accounting includes multiple duplicative entries for the same dates, records that do not match the Proofs of Claim and

Notices of Mortgage Payment Change, and shows payments of \$10,143.77 that were not made by the Chapter 13 Trustee.

The Chapter 13 Trustee argues that \$96,108.87 was due through January 2018 to Creditor for ongoing mortgage payments.

CREDITOR'S RESPONSE

Creditor filed a Response on February 13, 2018. Dckt. 294. Creditor responds that its ledgers do not show the post-petition payments as being current. Creditor states that it and its counsel are reconciling the Chapter 13 Trustee's records with its own accounting and all notices filed in this case to uncover the discrepancy, but they have not resolved the matter yet.

Creditor requests additional time to complete its research and to determine whether the matter has been resolved or to supplement the record.

DEBTOR'S RESPONSE

Christian Newman ("Debtor") filed a Response on February 13, 2018. Dckt. 296. Debtor supports the Chapter 13 Trustee's accounting that all payments have been made and are current.

RULING

Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution fails to provide any evidence in opposition to Motion. Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution offers no evidence, or even an argument by its attorney, why it has no records of the payments received and applied to this obligation over the five years of this Plan.

Telling is that no officer or employee has been presented to provide testimony under penalty of perjury that there is this alleged substantial post-petition default. This unsupported argument by counsel for Creditor U.S. Bank, N.A., as trustee, a federally insured financial institution, flies in face of the evidence presented by the Chapter 13 Trustee.

No explanation is provided by U.S. Bank, N.A., as trustee, a federally insured financial institution why it has to have its outside counsel working to reconcile the internal bank records.

In the Response to Notice of Final Cure Payment, US Bank, N.A., as trustee, a federally insured financial institution states that the payments on the claim are in default for the post-petition periods from August 1, 2017, in the amounts totaling \$7,792.43. December 29, 2017 Filed Docket Entry. The attachment purporting to show the payments received, and not received, is very confusing. It shows payments received. Then it shows negative entries for the same dates. The information appears to be all but nonsensical.

In comparison, the Chapter 13 Trustee provides evidence of the payments being made each month through the end of this plan on July 31, 2017. (It appears that the payment made on September 29, 2017, is for the monthly of June and July, 2017. Exhibits A and B, Dckts. 290.

It appears that the alleged default arises after the end of the Plan - August 2017. It appears that the pre-petition arrearage was cured and that there is no post-petition arrearage through the end of the Plan. After the Plan ended in July 2017, there were no further payments to be made by the Chapter 13 Trustee.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

Creditor has not presented any evidence that its claim has not actually been cured. Instead, Creditor presents to the court that it is investigating still how its records contradict with those of the Chapter 13 Trustee.

In the interest of determining that a correct amount has been paid, a continuance is warranted for Creditor to finish its investigation, possibly discovering that there is not actual dispute such that this matter can be resolved without court intervention. The hearing on the Motion is continued to 3:00 p.m. on March 27, 2018, which is a sufficient continuance for Creditor to reconcile its accounting.

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 Determine Final Cure and Mortgage Payment filed by Curtis Heigher (“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 Determine Final Cure Payment is granted, with the court determining that upon completion of the Plan all arrearages on Creditor’s claim had been cured and payments on the obligation were current as of the end of the Plan, July 31, 2017 (the final payment having been disbursed to Creditor on September 29, 2017 by the Chapter 13 Trustee).

17. [14-30877-E-13](#) **TROY HARDIN**
PGM-9 **Peter Macaluso**

**MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
1-18-18 [\[172\]](#)**

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, and Office of the United States Trustee on January 18, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Troy Hardin, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 6, 2017, through November 28, 2017. Applicant requests fees in the amount of \$2,520.00.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on February 2, 2018. Dckt. 176. The Chapter 13 Trustee notes that he does not oppose the Motion, but he states that the fees may not be paid until the sixtieth month of the Plan.

He notes that the Plan lists administrative expenses in the amount of \$75.00 per month, and he will need thirty-four months to pay Applicant's fees from that allocation.

APPLICANT'S REPLY

Applicant filed a Reply on February 20, 2018. Dckt. 178. Applicant states that Line 2.07 of the Modified Plan should have read that “\$65.00 of each monthly plan payment” should be paid toward administrative expenses with an increase after the Class 2A secured claim of Schools Financial Credit Union was paid in full.

He argues that the credit union’s claim was only required to be \$138.00 to pay the claim fully by the sixtieth month, but that dividend was increased to \$325.00 to ensure timely payoff.

Applicant requests that the Motion be granted and that additional fees be allowed.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—

- (I) reasonably likely to benefit the debtor's estate;
- (II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include responding to a motion to dismiss, seeking a loan modification, and proposing a modified plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

The confirmed modified plan states that Applicant will seek attorney’s fees by motion. Dckt. 155.

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

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

FEES REQUESTED

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

Motion to Dismiss: Applicant spent 1.70 hours in this category. Applicant reviewed the Chapter 13 Trustee's motion to dismiss, contacted Client, prepared pleadings, and attended a hearing.

Motion to Approve Loan Modification: Applicant spent 3.05 hours in this category. Applicant met with Client to discuss a loan modification, presented a modification offer, sought court approval, and appeared at a hearing.

Motion to Confirm Modified Plan: Applicant spent 3.65 hours in this category. Applicant met with Client to discuss a modified plan, prepared the plan and pleadings, responded to opposition, and appeared at a hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter Macaluso, attorney	8.40 hours	\$300.00	\$2,520.00
Total Fees for Period of Application			\$2,520.00

FEES ALLOWED

The unique facts surrounding the case, including opposing dismissal, seeking a loan modification, and modifying a plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,520.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

From the pleadings submitted by the Chapter 13 Trustee, payment of these substantial and unanticipated fees may not occur until the sixtieth month of the plan because there are not sufficient funds that have been designated for administrative expenses.

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

Fees \$2,520.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Troy Hardin (“Debtor”)

Fees in the amount of \$2,520.00,

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

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

18. [17-24979-E-13](#) **MARIO LOPEZ AND LEAH** **MOTION TO CONFIRM PLAN**
LBG-1 **ALBERTO** **12-15-17 [54]**
 Lucas Garcia

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 74 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Mario Lopez and Leah Alberto (“Debtor”) seek confirmation of the Amended Plan because of unexpected changes in Debtor’s month-to-month finances, tax debts, and unsecured debts, as well as removing a leased Honda from the Plan, which has been surrendered. Dckt. 56. The Amended Plan calls for monthly Plan Payments of \$950.00 for four months and then \$650.00 per month for fifty-six months. Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 13, 2018. Dckt. 70. The Chapter 13 Trustee asserts that Debtor is \$4,150.00 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

The Chapter 13 Trustee notes that Debtor's Amended Plan and Motion to Confirm Plan conflict in regard to the percentage paid to the general unsecured claims. Ninety-one percent is to be paid to unsecured claims under § 2.15 of the Amended Plan, while the Motion to Confirm Plan states that unsecured claims shall be paid one-hundred percent. Dckts. 54, 58.

The Chapter 13 Trustee asserts that the Franchise Tax Board has a claim for \$315.25 in priority unsecured debt. Proof of Claim 4-2, filed on September 5, 2017. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

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

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

The Plan proposes payments of \$650.00 per month beginning December 2017, a decrease in plan payments after completed repayment of a loan for \$724.78 per month in October 2017. Debtor should not have reduced plan payments after the repayment of that loan, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$972.43. Thus, the court may not approve the Plan.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in seventy-six months due to the Internal Revenue Service claim indicating a priority debt of \$9,424.61, while Class 5 of the Plan only indicates a debt of \$5,250.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

RULING

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Mario Lopez and Leah Alberto (“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.

19. [15-28983-E-13](#) **MANUEL/VIRGINIA MADRID** **MOTION TO MODIFY PLAN**
MGG-2 **Matthew Grech** **1-16-18 [66]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2018. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Manuel Madrid, Jr. and Virginia Madrid (“Debtor”) seek confirmation of the Modified Plan because it incorporates the delinquency set forth in the Motion to Dismiss, thus requiring a Plan Payment increase that is manageable by reducing expenses. Dckt. 68. The Modified Plan calls for payments of \$670.02 per month for two months, then \$964.00 per month for twenty-four months, and then \$1,075.00 per month for thirty-four months. Dckt. 69. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 9, 2018. Dckt. 77. The Chapter 13 Trustee argues that the Modified Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Modified Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

The Chapter 13 Trustee asserts that Debtor is \$3,766.18 delinquent in plan payments, which represents multiple months of the \$964.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee also notes that the Internal Revenue Services was not served at: United States Department of Justice Civil Trial Section Western Region, Box 683 Ben Franklin Station, Washington, DC 20044 or United States Attorney (For Internal Revenue Service) 501 I Street Suite 10-100, Sacramento, CA 95814.

RULING

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Manuel Madrid, Jr. (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2018. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Dana Thompson (“Debtor”) seeks confirmation of the Modified Plan because there are changes in the amounts owed to secured claims and in the amount of priority and general unsecured non-priority claims. Dckt. 61. The Modified Plan calls for \$35,720.00 to be paid through December 2017 and then for plan payments of \$1,300.00 commencing January 25, 2018. Also, the Modified Plan calls for Debtor to provides copies of state and federal tax returns beginning with tax year 2016 within one week of their filing. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 9, 2018. Dckt. 73. The Chapter 13 Trustee asserts that Debtor is \$290.00 delinquent in plan payments, which represents less than one month of the \$1,300.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

RULING

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Dana Thompson (“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.

21. [17-28190-E-13](#) KASSAWAN LEDWITH
DPC-1 Rick Morin

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-1-18 [14]**

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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 1, 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 XXXXXXXXXXXX.

David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that Kassawan Ledwith’s (“Debtor”) Schedule I, Line 5d lists the repayment of retirement fund loans for \$926.52. Though the loan information shows the loan maturing between March 31, 2020, and April 30, 2020, the Plan shows no increase in payment.

The Chapter 13 Trustee notes, however, that he received an order confirming that showing an increase in plan payments from \$577.00 to \$1,041.00 during the thirtieth month of the Plan and continuing for the duration of Plan.

Additionally, the Chapter 13 Trustee notes that the claim for Kenneth Ledwith is listed as not receiving any divided. The Chapter 13 Trustee is not opposed to that treatment, but he raises notice of it to ensure that the parties understand fully that Mr. Ledwith will not receive any disbursements from the Chapter 13 Trustee on a claim that could be discharged fully upon completion of this case.

At the hearing, the parties confirmed that the payment increase is satisfactory and accounts for the end of repayment on retirement fund loans. They also agreed that the treatment of Kenneth Ledwith's claim is intended to be for no distribution.

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 **XXXXXXXXXX**.

22. [14-29505-E-13](#) **JOHN/CAROLIN FUNDERBURG** **MOTION TO MODIFY PLAN**
DJC-6 **Diana Cavanaugh** **1-10-18 [115]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 10, 2018. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

John Funderburg and Carolin Funderburg (“Debtor”) seek confirmation of the Modified Plan because their incomes have changed and because they have removed an automobile expense and have adjusted monthly expenses. Dckt. 117. The Modified Plan proposes monthly payments of \$4,878.00 for twenty-one months commencing January 25, 2018, with \$179,874.14 paid into the Plan so far and with a 67% dividend to general unsecured claims. Dckt. 118. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 12, 2018. Dckt. 124. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-two months due to the total owed under the Modified Plan being \$90,886.19, instead of the \$90,068.51 proposed by Debtor. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Chapter 13 Trustee argues that Debtor's expenses (specifically, \$400.00 charitable contributions, \$1,400.00 food and housekeeping, \$350.00 medical) have been and still are unsupported by any credible information and have not been addressed, even though both the Chapter 13 Trustee and the court have questioned them previously. *See* Dckt. 122. The Chapter 13 Trustee has requested tax returns from 2014–17, six months of bank statements, and three months of paystubs, and he would not oppose a continuance to review those records when (and if) they are supplied by Debtor.

The Chapter 13 Trustee argues that the latest Schedule J shows \$355.55 for a monthly car payment, but that is inconsistent with a prior declaration from a motion to incur debt and from that motion's supporting retail installment contract, which both indicated that Debtor was purchasing a 2012 Honda Civic on monthly payments of \$286.01. Debtor has not explained the increase, and it is not included in the Plan.

The Chapter 13 Trustee argues that the Modified Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Modified Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on February 15, 2018. Dckt. 127. The Chapter 13 Trustee states that the Modified Plan will now complete within sixty months because a Notice of Mortgage Payment Change was filed that reduced Debtor's mortgage payments from \$2,432.01 to \$2,264.46.

The remainder of the Chapter 13 Trustee's grounds for opposing confirmation have not been resolved.

RULING

While the Modified Plan may now complete within sixty months, there are additional problems with the Modified Plan. As the court noted on a Motion to Dismiss brought by the Chapter 13 Trustee,

Additionally, Debtor filed a Modified Plan on January 10, 2018, in what appears to be a further attempt to resolve the issues raised by this Motion. *See* Dckt. 118. Unfortunately for Debtor, the submitted plan is not the current plan form; instead, Debtor has used an outdated form.

Debtor has provided the court with a declaration in support of the Motion to Confirm that discusses changes to specific expenses as well as changes in Debtor's income since this case was filed in 2014. Supplemental Schedules I and J have been filed by Debtor. Dckt. 114.

In reviewing Supplemental Schedules I and J, some items stand out when compared to the prior Amended Schedules I and J (Dckt. 75). On the two Schedules I, though Debtor states that there have been decreases in income, their Combined

Monthly Net Income is almost exactly (within \$1.04 of the other) the same amount of Monthly Income from employment.

On the two Schedules J, Debtor now shows almost identical monthly expenses, notwithstanding having made significant home and vehicle repairs. It appears that the information on the latest Schedule J could be “constructed” expenses to reach a pre-determined Net Monthly Income to minimize the monthly plan payment rather than properly provide for payment of creditor claims.

....

[I]n considering the Motion to Modify the court will closely review the financial information provided. Given the almost identical expense information and Debtor having such substantial “surplus” monthly net income to cure the arrearage, Debtor must provide the court with credible, properly supported financial information. That includes documenting that Debtor has actually made charitable contributions averaging \$400 per month prior to and during this case. Debtor will also document the \$1,400.00 in monthly food and housekeeping supplies. Debtor will properly explain how there are actual monthly medical expenses of \$350.00, \$615.00 transportation expenses, and home maintenance expenses increased to \$200.00.

Dckt. 122. Debtor has not filed any additional supplemental pleadings—whether they be supplemental declarations or amended schedules—that seek to address the significant shortcomings in how Debtor’s finances have been presented to the court. The court does not find Debtor’s calculation of expenses to be credible.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by John Funderburg and Carolin Funderburg (“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.

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

The Motion to Confirm Chapter 13 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Confirm the Second Amended Plan is denied.

Linda Vanpelt, the Debtor seeks to confirm her Second Amended Plan. The Motion states that: (1) Debtor has paid \$4,000 into the Plan through December 2019; (2) Debtor will make monthly plan payments of \$2,040.00 commencing in January 2018 and continuing thereafter for the final fifty-five months of the Second Amended Plan; and (3) the dividend for unsecured claims will not be less than 0.00%. Dckt. 65.

Debtor provides her Declaration in support of the Motion. Dckt. 67.

OPPOSITION OF HSBC BANK, USA, AS TRUSTEE

HSBC Bank, USA, as Trustee, filed its Opposition to the present Motion. Dckt. 84. The Objection asserts a \$256,806.77 arrearage, which is provided for in the proposed Second Amended Plan. However, the “cure” is contingent on Debtor receiving a loan modification, and the plan suspends the post-petition payments to Creditor, with Debtor making a \$930.00 payment pending a loan modification, with the current regular monthly mortgage payment being \$5,681.04.

Creditor provides Proof of Claim No. 5 as prima facie evidence of the obligation underlying the secured claim in this case. Exhibit 1, Dckt. 85. From Proof of Claim No. 5, the court obtains the following financial information:

- A. Amount of Claim.....(\$956,617.00)
- B. Pre-Petition Arrearage.....(\$256,806.77)
- C. Note Interest Rate.....6.5%

- D. Monthly Mortgage Payment
 - Principal and Interest.....\$4,834.70
 - Monthly Escrow.....\$ 846.34

Total Current Monthly Post-Petition Payment.....\$5,681.04

Using a pre-petition arrearage of \$256,806.77, it appears that there is in excess of three years of payment defaults on this obligation. (The court used the stated principal and interest arrearage of (\$189,818) and divided it by the \$4,837.70 monthly p&I stated amount on the Mortgage Proof of Claim Attachment to Proof of Claim No. 5.

OPPOSITION FILED BY CHAPTER 13 TRUSTEE

The Chapter 13 Trustee has also opposed the Motion. Dckt. 93. The first grounds are that while the Plan purports to include the “Ensminger” language providing for a debtor to diligently pursue a loan modification, while adequately protect the interests of the creditor pending there either being an order vacating the automatic stay or creditor agreeing to a loan modification, the Trustee questions whether such provides are effectively put into play.

First, the Trustee notes that there is a \$980.00 “adequate protection payment,” no provision is made to pay insurance and property taxes (unless Debtor is intending to force Creditor to provide such insurance and pay the taxes to protect the Debtor’s interest in the property from the \$980.00 payment proposed to be made to Creditor.

The Trustee notes that since the Creditor has opposed confirmed, the Debtor must file a further amended plan. The Additional Provision § 6.09 does not relate to the creditor opposing the confirmation, but the Creditor denying the requested loan modification.

The Trustee continues, objecting that the Plan fails the liquidation test, Debtor having left Schedule B personal property assets blank. This conflicts with the discloses made by Debtor in her recent four prior bankruptcy cases.

The Trustee objects based on Debtor failing to provide copies of bank records. Further, that Debtor fails to make any provision for paying her state and federal income taxes on substantial income listed on Schedule I. Additionally, a review of Debtor’s Statement of Current Monthly Income (Form 122C-1), her monthly income si \$13,331.25, not the lesser amounts shown on Schedule I.

The Opposition concludes with the assertion that Debtor is not prosecuting this case in good faith. That Debtor has not accurately listed her creditors. That Debtor has not accurately disclosed her income.

RESPONSE BY DEBTOR

Debtor’s attorney filed a Response (Dckt. 105), which is not supported by any testimony of Debtor. He argues that Debtor will amend her Schedules to make them accurate. Counsel is “informed and believes” that Debtor is submitting a loan modification.

DISCUSSION

The court begins with the proposed Ensminger Additional Provisions. These provisions were created with substantial input by *ad hoc* group of debtors and creditors attorneys to put in place a process by which a debtor in good faith could pursue a loan modification, without amending the rights of the creditor. The provisions include non-exclusive grounds when a creditor is granted relief from the stay, with the creditor able at any time permitted to seek relief from the stay asserting the unamended rights and obligations under its secured claim.

One of the most significant provisions is that the debtor must make an adequate protection payment to creditor. This is a substantial payment, which is in the amount of the reasonably projected modified payment amount, including property taxes and insurance (whether the later are paid through escrow or directly by the debtor).

Here, Debtor proposes to make a \$930.00 a month “adequate protection payment.” In Proof of Claim No. 5, creditor asserts that its claim is fully secured. This indicates that Creditor believes that the property (Debtor’s residence) has a value in excess of the \$(956,617.00) claim.

On Schedule A Debtor states that the Property securing Creditor’s claim has a value of \$500,000. Dckt. 1 at 8. This is not inconsistent with the values stated in the two most recently filed cases by Debtor.

In considering whether the proposed payment is sufficient “adequate protection” being paid by a debtor who is good faith is pursuing a loan modification, the court considers what the modified payment would be. For a property worth \$500,000, the court will assume that a lender believing that it has a “borrower” who can afford to make the payments, a 30 year amortized loan, assuming a 6.5% interest rate (in today’s market and assuming a 100% loan to value), the monthly payment for just principal and interest would be \$3,160.34. Then, assuming that such loan has an impound for property taxes and insurance, the court uses an estimated \$350 a month (amount shown on Debtor’s Amended Schedule J, Dckt. 99). This requires Debtor to make a monthly “adequate protection” payment of at least \$3,510.34 to show the good faith ability to perform a loan modification if approved.

Unfortunately, does not propose to pay such amount, but only \$930.00, with the Debtor retaining \$350.00 a month to pay insurance and taxes, at some future date. Reviewing Amended Schedules I and J (Dckt. 99), Debtor has \$6,170.00 in pre-tax income (\$4,560 from her real estate business and \$1,610.00 in Social Security). On Amended Schedules I and J, Debtor makes no provision for paying taxes, so her actual post-tax income to pay her expenses and fund her plan will be less.

On Amended Schedule J Debtor states that she has expenses (excluding mortgage, property taxes, and insurance) for herself and her dependent adult son of \$2,520.00. Dckt 99 at 7-8; the court backing out the \$1,610.00 “expense” to back out the Social Security income made by Debtor for purposes of computing projected disposable income.

Debtor states that she has \$2,040 in projected disposable income, plus an additional \$1,610 in Social Security income, for a total of \$3,640, pre-tax.

Even assuming that \$2,520.00 of expenses is reasonable for two adults, with one being a dependent adult son with no income to contribute to the expenses (none being shown on Amended Schedule I), Debtor does not have sufficient monies to fund the Plan. The court computes this as follows:

Pre-Tax Monthly Income.....	\$3,640
Projected State, Federal, Self-Employment Tax on \$4,500 a month.....	<u>(\$ 720)</u>
Monies to Fund Plan Monthly.....	\$2,920
Required Plan Payments	
Chapter 13 Debtor’s Attorney’s Fees of \$5,000/60 months.....	(\$ 83)
Chapter 13 Trustee Fees, Estimated at 8%.....	(\$ 234)
Creditor Adequate Protection Payment.....	(\$3,510)
Class 5 Tax Claims of \$15,901.53/60 months (Amended POC No. 7.....)	(\$ 265)
Over/(Under) Funding of Plan.....	(\$1,172)

Based on Debtor’s financial information, even if Debtor did not have to pay federal income tax, state income tax, or self-employment tax, she cannot fund the minimum monthly plan payments even for a plan with the Ensminger Additional Provisions. If the value of the property is higher, then the negative funding worsens. FN.1.

FN.1. If the value is between the \$956,000 asserted by Creditor and the \$500,000 asserted by Debtor, and “only” \$700,000, Debtor’s principal and interest payments amortized over 30 years at 6.5% interest (for a 100% loan to value ratio) would be \$4,424.48. When added to the \$350 a month estimated for taxes and insurance, the monthly payment jumps to \$4,774.48.

Though Debtor may desperately want to keep her home, strip off the junior liens by having the secured claims valued at \$0.00, and have two adults exist on \$2,520.00 a month for all their expenses (other than the mortgage, insurance, and property taxes), she cannot afford to pay the mortgage on the property worth at least \$500,000. This desperate desire appears to have Debtor proposing an unreasonable, inadequate protection payment of only \$980.00.

This flows into the Trustee’s objection that Debtor has failed to provide accurate information on her Schedules. Debtor is not new to bankruptcy having four recent cases:

- (1) 15-24979, Chapter 13 filed June 21, 2015, and dismissed September 17, 2015 (counsel)
- (2) 15-20897, Chapter 13 filed February 5, 2015, and dismissed June 26, 2015 (*pro se*)
- (3) 14-27048, Chapter 13 filed July 7, 2014, and dismissed December 3, 2014 (counsel)

(4) 11-30525, Chapter 13 filed April 28, 2011 (counsel)
Voluntary Conversion to Chapter 7 February 13, 2013
Chapter 7 Discharge March 7, 2016

As noted by the Chapter 13 Trustee, Debtor's Schedules are inconsistent. On Schedule C, Debtor lists owing a 2000 Toyota, which is subject to a secured claim of (\$5,350). Dckt. 23. On Schedule D Debtor does not list any creditor having a claim secured by a 2000 Toyota. Dckt. 24.

On Schedule A/B, with respect to personal property Debtor states under penalty of perjury has no personal property, including that:

- A. She has no vehicles (Question 3).
- B. She has no household goods (Question 6)
- C. She has no TV, radios, or other electronics (Question 7)
- D. She has no equipment for any sports or hobbies (Question 9)
- E. She has no clothes (Question 11)
- F. She has no jewelry (Question 12)
- G. She has no cash (Question 16)
- H. She has no savings or checking accounts (Question 17)
- I. She has no stocks, bonds, or other investments (Questions 18-20)
- J. She has no retirement or pension accounts (Question 21)
- K. She has no licenses (Question 27)
- L. She has no claims against third-parties (Question 22)
- M. She has no business related property (Question 46)

Dckt. 1 at 9-13.

In her most recent prior case, Debtor stated under penalty of perjury that she had: (1) a Wells Fargo Bank Checking Account; (2) \$5,000 in household good; (3) \$500 of clothing; (4) \$700 of jewelry; (5) \$20,000 possible commissions on open escrows; (6) 2000 Toyota Land Cruiser; and (7) 2003 Jeep Grand Cherokee. 15-24979; Dckt. 1 at 11-13.

In the prior bankruptcy case, in her Chapter 13 Plan she states that the property securing

Creditor's claim was purchased in 2006 for \$1,120,000. (The court notes that 2006 was right before the real estate market crash that started in 2007. However, the real estate market has rebounded over the past four or five years.) *Id.*; Plan ¶ 2.09(d). On Schedule A in the prior case Debtor lists the value at \$550,000. *Id.*; Dckt. 1 at 10.

Giving the Debtor the benefit of the doubt, the court paraphrases advice given to the judge many years ago, "desperate people do unwise things." Here, Debtor appears to be desperate to keep the real property, having filed multiple, unsuccessful Chapter 13 cases. Unfortunately, Debtor's income does not support owning the real property. Though Debtor twists and turns, going through different attorneys, the outcome is the same, the cases fail. Economically, her plans are not feasible – absent Creditor choosing to make a gift or out of the norm financial transaction with Debtor. Creditor clearly indicates that it does not choose to do so.

The proposed Second Amended Chapter 13 Plan is not feasible, has not been proposed in good faith, Debtor has failed to provide the information required in the bankruptcy schedules indicating that the bankruptcy case is not being prosecuted in good faith, and the Plan does not properly provide for the secured claim of Creditor. The proposed Chapter 13 Plan does not comply with the requirements of 11 U.S.C. §§ 1325 and 1322, the Motion is denied, and the Plan is not confirmed.

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

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

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

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

IT IS ORDERED that the Motion is denied, and the Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 3, 2018. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Mitchell Logan, Jr. ("Debtor") seeks confirmation of the Amended Plan because the treatment of general unsecured and secured claims needed clarifying. Dckt. 36. The Amended Plan calls for monthly Plan Payments of \$750.00; as well as \$500.00 per month for the first six months for administrative expenses; \$175.00 paid to the Class 2 Santander Consumer USA, Inc. claim for the first six months then \$350.00 per month until paid in full; and \$350.00 per month beginning in month nine paid to the Class 2 Consumer Portfolio Services claim. Dckt. 38. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on February 12, 2018. Dckt. 46. The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1 and General Order 17-03.

The Chapter 13 Trustee asserts that Debtor is \$2,250.00 delinquent in plan payments, which represents multiple months of the \$750.00 plan payment. The Chapter 13 Trustee also notes that only one payment has been made, paid at the hearing on the Motion to Dismiss, though five payments have come due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that Debtor does not propose this Plan in good faith because Debtor does not represent that the Amended Plan is sought as an answer to the Chapter 13 Trustee's original objections.

The Chapter 13 Trustee asserts that Debtor is engaging in a strategy of delay. This is Debtor's second recent case. Debtor's spouse case (No. 15-28851) also has a recent prior case (No. 14-24184). Additionally, Debtor has only made one payment in this case and has waited more than two months before filing a new plan when the original plan was denied. Considering Debtor's spouse's pending case, no attempt has been made as to show why Debtor's case is necessary in good faith.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for 2016. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

RULING

As asserted by the Chapter 13 Trustee, the current plan is in a form which may not be used under the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. Debtor is substantially delinquent in payments.

With respect to the good faith contention, the court notes as follows. Debtor filed a Chapter 13 case on March 16, 2017, No. 17-21730, with his current counsel substituting in that case to represent Debtor. That case was dismissed on June 22, 2017. In determining that case should be dismissed, the court's findings include a detailed recitation of the inconsistent positions and "aggressive" efforts to try and divert monies from properly being paid to creditors. 17-21730; Civil Minutes, Dckt. 70.

It appears that Debtor's "aggressive" pushing of the financial envelope has continued in this case. On Schedule I Debtor reports that his wife has \$7,029 in gross monthly income as a teacher, but only \$3,255 a month in take-home income. In addition to the normal tax deductions and mandatory contributions to the state teacher's retirement program, Debtor states that his wife is electing to have an additional \$1,000 a month in voluntary contributions for additional retirement beyond her CalSTRS benefits.

Debtor adds \$2,180 of Social Security benefits and \$2,231 in retirement income to the mix. Debtor asserts that \$1,900 of his Social Security benefits should not be considered in computing projected disposable income.

On Schedule J Debtor lists all of the normal living expenses, including \$2,900 for his wife's Chapter 13 bankruptcy plan payment in her case. However, her payment has been only \$2,750.00 since September 2016. 15-28551; Confirmation Order, Dckt. 46.

On Debtor's Schedule I he uses exactly the same income information for his spouse as she did in November 2015. Debtor states under penalty of perjury that his Spouse's income has not increased, even a cost of living increase, since 2015. That does not appear likely to the court.

On the Spouses Schedule I, the retirement income from Debtor is stated to be only \$1,600 (15-28551, Dckt. 1 at 24), which is \$641.00 a month less than he was actually receiving in August 2017 when this case was filed. Schedule I, Dckt. 1 at 29.

Using the two Schedules and the actual amount Plan payment of the Spouse in her case, the court computes the projected disposable income in this case as follows:

Spouse's Take-Home Income as Reported.....	\$3,255.09
Amount of Spouse's Voluntary, Extra, Retirement Payment.....	\$1,000.00
Debtor's Non-Social Security Income	\$2,241.00 FN.1.
Combined Monthly Income FN.2.....	\$6,496.09
Schedule J Expenses.....	<u>(\$3,911.92)</u> FN.3
Projected Disposable Income to Fund Bankruptcy Plans.....	\$2,584.17
Spouse's Chapter 13 Payment through November 2020.....	<u>(\$2,750)</u>
Monies to Fund Debtor's Chapter 13 Plan.....	\$-0-

FN.1. Though Debtor asserts that the Social Security income to be excluded from the projected disposable income computation is \$1,900, that appears to be a typographical error due to Debtor repeatedly copying his forms and filing multiple bankruptcy cases. That was it was reported to be in 2015 on the Spouse's Schedule I. On Debtor's Schedule I it is stated to be \$2,180.00, which amount the court has not included in the above computation.

FN.2. This Combined Monthly Income amount is likely understated because it appears that the Spouse's income information is stale, dating back to 2015, and not the current amount.

FN.3. Though some of these expenses seem unreasonably high, that is not at issue before the court.

In this case, for the first thirty-nine months of this Plan Debtor proposes to voluntarily fund the plan with \$750.00 of his Social Security income. Such is his free choice.

However, beginning in the fortieth month of the Plan, the Spouse's plan payments cease and Debtor can begin making \$2,584.17 a month plan payment (or more as Spouse's income and Debtor's retirement income rises). He can then fund the plan with at least \$51,683.40 to pay his creditors (\$2,584.17

a month x 20 months). After dropping out the creditor for his daughter's car, Debtor will be able to pay his general unsecured claims in full, with interest if he chooses to go the full sixty months.

However, Debtor is in default in his plan payments. Debtor has not provided his projected disposable income to fund the Plan. Debtor proposes paying his daughter's creditors or for his daughter's car to divert monies from his creditors.

Debtor's conduct manifests a strategy to abuse the bankruptcy laws, not propose a plan in good faith, not prosecute a bankruptcy case in good faith, and not file this (and his prior multiple) bankruptcy case in good faith. To the extent that the Chapter 13 Trustee and the U.S. Trustee believes that the Debtor's conduct warrants consequences greater than merely denial of confirmation or the dismissal of another in a line of multiple dismissals, they are well aware of and capable of taking whatever action is appropriate.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Mitchell Logan, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2018. By the court’s calculation, 50 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Barbara Myers (“Debtor”) filed a Third Amended Plan and corresponding Motion to Confirm on February 8, 2018. Dckts. 50, 52. Filing a new plan is a *de facto* withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by Barbara Myers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court’s calculation, 49 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 9 of Lobel Financial is sustained, and the claim is disallowed in its entirety.

Calvin Cooper and Tawana Cooper (“Objector”) request that the court disallow the claim of Lobel Financial (“Creditor”), Proof of Claim No. 9 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$9,265.64. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that a vehicle securing the claim was repossessed and sold in early 2011. An attachment to the Proof of Claim states that the last payment was made on June 22, 2011.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 9-1 lists the last payment as occurring on June 22, 2011. No payment or other transaction occurred after June 22, 2011. Thus, the four-year statute of limitations expired on June 22, 2015.

This bankruptcy case was filed on April 19, 2017—667 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. 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 Lobel Financial (“Creditor”) filed in this case by Calvin Cooper and Tawana Cooper (“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 9-1 of Lobel Financial is sustained, and the claim is disallowed in its entirety.

Requests for prevailing party attorneys fees and costs by Objector shall be requested as provided in Federal Rule of Bankruptcy Procedure 7054.

28. [17-22606-E-13](#) CALVIN/TAWANA COOPER
RWH-5 Ronald Holland

**OBJECTION TO CLAIM OF CAVALRY
INVESTMENTS, LLC, CLAIM NUMBER
13
1-9-18 [86]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court’s calculation, 49 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 of Cavalry Investments, LLC as assignee of Fireside Bank is sustained, and the claim is disallowed in its entirety.

Calvin Cooper and Tawana Cooper (“Objector”) requests that the court disallow the claim of Cavalry Investments, LLC as assignee of Fireside Bank (“Creditor”), Proof of Claim No. 13 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$24,725.06. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that the last payment made on Creditor’s claim was in 2007. Creditor has not provided any information about payments with its claims but did attach a bill of sale from a prior creditor that is dated March 7, 2012.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 13-1 does not list any information about what payments have or have not been made. Instead, the Proof of Claim includes the original retail installment sale contract and a bill of sale to the current Creditor. Debtor alleges that payment has not been made since 2007.

Objector testifies that they defaulted on the underlying loan for Creditor's claim in 2007 and that no payments were made after that default. Dckt. 88 at 2:7–8. Objector states that when they learned that the claim was transferred to Creditor the vehicle was offered to Creditor, but Creditor did not repossess it. *Id.* at 2:9–10. Objector asserts that the vehicle was later totaled and that Creditor removed the account from Objector's credit reports in 2014. *Id.* at 2:11–12.

Creditor has not opposed the Objection, and the only evidence that the court has been presented with are Objector's statements under penalty of perjury. Based upon the evidence submitted, no payment or other transaction occurred after 2007. Thus, the four-year statute of limitations expired during 2011.

This bankruptcy case was filed on April 19, 2017—at least 1,936 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. 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 Cavalry Investments, LLC as assignee of Fireside Bank ("Creditor") filed in this case by Calvin Cooper and Tawana Cooper ("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 of Cavalry Investments, LLC as assignee of Fireside Bank is sustained, and the claim is disallowed in its entirety.

Requests for prevailing party attorneys fees and costs by Objector shall be requested as provided in Federal Rule of Bankruptcy Procedure 7054.

29. [17-22606-E-13](#) CALVIN/TAWANA COOPER
RWH-6 Ronald Holland

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 14
1-9-18 [\[91\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court’s calculation, 49 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 14 of LVNV Funding LLC, as assignee of Arrow Financial Services LLC, is sustained, and the claim is disallowed in its entirety.

Calvin Cooper and Tawana Cooper (“Objector”) requests that the court disallow the claim of LVNV Funding LLC, as Assignee of Arrow Financial Services, LLC (“Creditor”), Proof of Claim No. 14 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$440.12. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was January 30, 2006. The date of last payment on the Statement of Account Information attached to the Proof of Claim states July 15, 2005.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

A review of Proof of Claim No. 14 lists the charge off date as January 30, 2006. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after July 15, 2005. Thus, the four-year statute of limitations expired on July 15, 2009.

This bankruptcy case was filed on April 19, 2017—2,835 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety to the statute of limitations expiring prior to the filing of the case. 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 LVNV Funding LLC, as assignee of Arrow Financial Services LLC ("Creditor") filed in this case by Calvin Cooper and Tawana Cooper ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14 of LVNV Funding LLC, as assignee of Arrow Financial Services LLC is sustained, and the claim is disallowed in its entirety.

Requests for prevailing party attorneys fees and costs by Objector shall be requested as provided in Federal Rule of Bankruptcy Procedure 7054.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court’s calculation, 49 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 15-1 of LVNV Funding, LLC as Assignee of CVF Consumer Acquisition Company is sustained, and the claim is disallowed in its entirety.

Calvin Cooper and Tawana Cooper (“Objector”) requests that the court disallow the claim of LVNV Funding, LLC as Assignee of CVF Consumer Acquisition Company (“Creditor”), Proof of Claim No. 15-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$591.98.

Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was May 6, 2005, and the charge off date was December 19, 2005. The date of last payment on the Statement of Account Information attached to the Proof of Claim states May 6, 2005.

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).

California Code of Civil Procedure § 337 states in relevant part:

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 15-1 lists the charge off date as December 19, 2005. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after May 6, 2005. Thus, the four-year statute of limitations expired on May 6, 2009.

This bankruptcy case was filed on April 19, 2017—2,905 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. 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 LVNV Funding, LLC as Assignee of CVF Consumer Acquisition Company ("Creditor") filed in this case by Calvin Cooper and Tawana Cooper ("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 15-1 of LVNV Funding, LLC as Assignee of CVF Consumer Acquisition Company is sustained, and the claim is disallowed.

Requests for prevailing party attorneys fees and costs by Objector shall be requested as provided in Federal Rule of Bankruptcy Procedure 7054.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Richard Lasby and Staci Lasby (“Debtor”) have provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 2, 2018. Dckt. 47. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Richard Lasby and Staci Lasby (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on January 10, 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.

32. [16-25115-E-13](#) **ANTHONY BORTKO** **MOTION TO MODIFY PLAN**
CYB-1 **Candace Brooks** **1-12-18 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 12, 2018. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Anthony Bortko (“Debtor”) seeks confirmation of the Modified Plan because he wishes to cure the default in Plan Payments due to reduction in pay and gambling by modifying the Plan to include the two missed Plan Payments. Dckt. 41. The Modified Plan requires payments of \$2,263.00 per month, beginning January 2018 and continuing for the duration of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 12, 2018. Dckt. 49. The Chapter 13 Trustee does not oppose Debtor’s Motion to Modify Plan and notes that Debtor is current under the proposed plan and that the Modified Plan is feasible.

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 Anthony Bortko (“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 January 12, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 10, 2018. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Bart Setter (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 1, 2018. Dckt. 54. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Bart Setter (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on January 10, 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.

34. [17-28320](#)-E-13 **JOSE/BLANCA LOARCA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mario Blanco** **PLAN BY DAVID P. CUSICK**
2-1-18 [19]

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, but the Chapter 13 Plan filed on December 23, 2017, is not confirmed because Jose Loarca and Blanca Loarca (“Debtor”) have filed an Amended Plan and Motion to Confirm.**

Debtor filed an Amended Plan and Motion to Confirm on February 5, 2018. Dckts. 23, 26. That plan has been set for a hearing on March 27, 2018. Dckt. 24.

35. [17-28028](#)-E-13 **NDILE NJENGE** **OBJECTION TO CONFIRMATION OF**
DPC-2 **Randall Ensminger** **PLAN BY DAVID P. CUSICK**
1-24-18 [35]

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 22, 2017. By the court’s calculation, 67 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Stanley Covell and Patricia Covell (“Debtor”) have filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 12, 2018. Dckt. 59. 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 Stanley Covell and Patricia Covell (“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 December 22, 2017, 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.

37. [17-27751-E-13](#) **MISHAEL/LUZ BAUTISTA** **OBJECTION TO NOTICE OF**
DPC-1 **Harry Roth** **MORTGAGE PAYMENT CHANGE**
1-4-18 [42]

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

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, Creditor, and Office of the United States Trustee on January 4, 2018. By the court’s calculation, 54 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Objection to Notice of Mortgage Payment Change has been continued to 3:00 p.m. on March 27, 2018, by prior order of the court.

David Cusick (“the Chapter 13 Trustee”) objects to the Notice of Mortgage Payment Change filed by JP Morgan Chase Bank, National Association, (“Creditor”) on December 14, 2017. He objects that the Notice asserts a new, post-dated payment due date of December 1, 2017. Instead, the Chapter 13 Trustee argues that Federal Rule of Bankruptcy Procedure 3002.1(b) requires the new payment date to be at least twenty-one days after the notice. Additionally, he argues under the same rule that a notice can only be filed by a creditor that has filed a claim, which Creditor has not.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on February 13, 2018. Dckt. 77. Creditor argues under Federal Rule of Bankruptcy Procedure 3002.1(a) that the notice requirements do not apply when the automatic stay has

been lifted. In this case, Creditor argues that the automatic stay was lifted for a junior lien by court order on January 24, 2018. *See* Dckt. 73.

STIPULATION AND ORDER APPROVING STIPULATION

The parties filed a joint stipulation to continue this hearing on February 14, 2018. Dckt. 81. The parties agree to continue the hearing to 3:00 p.m. on March 27, 2018. *Id.* The court entered an order approving that stipulation on February 14, 2018. Dckt. 84.

RULING

This Objection having been continued by prior order, the hearing is continued to 3:00 p.m. on March 27, 2018.

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

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

The Objection to Notice of Mortgage Payment Change filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection is continued to 3:00 p.m. on March 27, 2018, by prior order. *See* Dckt. 84 .

38. [16-23768](#)-E-13
MRL-1

DAVID KENNEDY
Mikalah Liviakis

CONTINUED MOTION TO AVOID LIEN
OF STATES RECOVERY SYSTEMS, INC.
12-8-17 [\[40\]](#)

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

The Motion to Avoid Judicial Lien is dismissed without prejudice.

David Kennedy (“Debtor”) having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 4, 2018, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor 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, Debtor’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 Avoid Judicial Lien filed by David Kennedy (“Debtor”) having been presented to the court, Debtor 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. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid Judicial Lien is dismissed without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Gerardo Reyes (“Debtor”) seeks confirmation of the Amended Plan because a class 2 claim was filed for lower than the amount provided for in the plan. Dckt. 47. The Amended Plan calls for monthly Plan Payments in the sum of \$850.00 for sixty months with a 6.00% dividend to general unsecured claims. Dckt. 48. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on February 5, 2018. Dckt. 54. The Chapter 13 Trustee has no objection to Debtor’s treatment of secured claim for F.C.I. Lender Services, Inc. due to an agreement reached between Debtor and F.C.I. Lender Services, Inc., which is reflected in Debtor’s Plan at paragraph 2.09(d), to establish the claim at \$17,339.00 with 4.00% interest.

The Chapter 13 Trustee objects to the treatment of a Class 2 claim for BMO Harris Bank, secured by a 2010 International truck. The Chapter 13 Trustee argues that the value of the truck appears to be for less than the creditor’s filed claim, which means that Debtor should seek to have the claim valued. No valuation motion has been filed, however. Without the claim being valued, the Plan discriminates unfairly against general unsecured claims. 11 U.S.C. § 1322(b)(1).

There is a claim for another vehicle listed in Class 4 of the Plan, and the Chapter 13 Trustee objects to its treatment because the debt will mature during the Plan and should be included in Class 2.

DEBTOR’S NON-OPPOSITION

Debtor filed a Non-Opposition on February 21, 2018. Dckt. 59. Debtor states that an amended plan will be filed.

RULING

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Gerardo Reyes (“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.

40.

[17-27883](#)-E-13
TAG-1

DENISE ASHLEY
Aubrey Jacobsen

CONTINUED MOTION TO VALUE
COLLATERAL OF KIA
12-15-17 [[13](#)]

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

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral is removed from calendar, the court having approved a stipulation in this matter.

The Motion filed by Denise Ashley (“Debtor”) to value the secured claim of Kia (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2015 Kia Soul (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$11,707.00 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).

CREDITOR’S OPPOSITION

Creditor (identified fully as Kia Motors Finance) filed an Opposition on January 2, 2018. Dckt. 29. Creditor references a NADA Valuation Report showing a value of \$15,925.00 for the Vehicle. Creditor opposes Debtor’s valuation, arguing that Debtor has not explained why the valuation is so much lower than listed in the NADA Valuation Report.

Creditor argues for three alternative grounds: denial of the Motion, amendment of the Motion to assert a value of \$15,925.00, or an evidentiary hearing set on or after March 1, 2018.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on January 8, 2018. Dckt. 34. The Chapter 13 Trustee notes that Debtor has not provided information about the style, condition, options, or needed repairs for the Vehicle. He notes that Schedules A/B and D list a value of \$11,707.00 and that Creditor has not filed a proof of claim.

JANUARY 23, 2018 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 27, 2018, to allow the parties to conduct discovery and discuss settlement. Dckt. 41.

STIPULATION TO MOTION AND ORDER APPROVING STIPULATION

On February 13, 2018, the parties submitted a Stipulation, listing the Vehicle as having a replacement value of \$13,816.00 and stating that Debtor will file an amended plan and schedules reflecting that stipulated value. Dckt. 48. The court approved the Stipulation on February 14, 2018. Dckt. 49.

RULING

The parties having resolved the valuation dispute, and the court having approved the parties’ stipulation, this Motion has been resolved, and there is nothing left for the court to rule upon in this matter. The Motion is removed from calendar, the court having approved by prior order the parties’ valuation of the Vehicle at \$13,816.00. *See* Dckt. 49.

41.	17-27988 -E-13 DPC-1	SHERRY EVANS Chad Johnson	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-17-18 [16]
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Final Ruling: No appearance at the February 27, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on December 8, 2017, is confirmed.**

Counsel for Sherry Evans (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Michelle Dorenkamp (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 12, 2018. Dckt. 81. 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 Michelle Dorenkamp (“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 January 10, 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.

43. [17-26897-E-13](#) **CARLOS/CLAUDIA BARAJAS** **MOTION TO CONFIRM PLAN**
TOG-1 **Thomas Gillis** **1-8-18 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2018. By the court’s calculation, 50 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Carlos Barajas and Claudia Barajas (“Debtor”) have provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on February 8, 2018. Dckt. 31. The Amended Plan complies with 11 U.S.C. § 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Carlos Barajas and Claudia Barajas (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on January 8, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

44.	17-27997-E-13 DPC-1	SHANNON BREEDLOVE Paul Bains	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-16-18 [19]
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Final Ruling: No appearance at the February 27, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on December 9, 2017, is confirmed.**

Counsel for Shannon Breedlove (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to 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.

45. [17-28098](#)-E-13 CHERYL HARMON
DPC-1 Susan Dodds

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-24-18 [23]**

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on December 14, 2017, is confirmed.**

Counsel for Cheryl Harmon (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to 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.