

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 4, 2017 at 2:00 p.m.

1. [16-27401](#)-C-13 ANTHONY BASS MOTION TO CONFIRM PLAN
FF-1 Gary Fraley 2-16-17 [[33](#)]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). 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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. Trustee filed a statement of non-opposition.

s
The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13

Plan filed by the 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, Debtor's Chapter 13 Plan filed on February 16, 2017 is confirmed, and counsel for the 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.

2. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE MOTION TO MODIFY PLAN
TJW-5 SALINAS 2-13-17 [[138](#)]
Timothy Welsh

ALSO 35

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

A. Debtors' petition was filed November 15, 2011. Debtors are proposing to modify the plan to \$24,450.00 total payments to pay unsecured creditors \$2,737.26 and complete the plan. The plan proposed 0% dividend to unsecured creditors yet only called for \$25,800.00 in payments to be made. There is no explanation for this modification.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

3. [17-20402](#)-C-13 WILLIAM HARTICON
DPC-1 James Keenan

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-7-17 [[18](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2017. Fourteen days' notice is required. That requirement is met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent \$3,350.00 in plan payments. Debtor has paid \$0 into the plan to date.

B. IRS filed a claim which indicated that debtor had not filed tax returns for the years of 2013, 2014, and 2015.

C. The plan relies on a motion to value but one has not been filed.

D. Debtor may be below median income. Debtor's income in his Schedule I includes both debtor's social security and his pension.

E. Debtor's plan provides that \$1,190.00 was paid prior to filing and that the fee balance to debtor's attorney is \$2,810.00 to be paid through the plan. This conflicts with the Rights and Responsibilities which provides fees total \$4,000.00 and debtor had already paid \$2,810.00 prior.

F. Debtor has failed to provide proof of his social security numbers to the Trustee.

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

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

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

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

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

4. [17-20505](#)-C-13 CARLOS MORA AND TONI
EAT-1 DUPONT-MORA
Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
2-20-17 [[16](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 20, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Creditor, Wells Fargo Bank, N.A., opposes confirmation of the Plan on the basis that:

A. The plan states that arrears owed to Wells Fargo are \$6,841.00 and payment of the ongoing monthly mortgage payment is \$1,319.00 where Wells Fargo believes that the true arrearage amount is \$13,922.41.

The Trustee filed a response indicating that (a) Wells Fargo had not filed a claim as of March 7, 2017, (b) debtor's plan payment would need to be increased to at least \$1,933.41 per month total, which is an increase of \$140.08 per month.

The court notes that a proof of claim has been filed by Wells Fargo Bank, N.A. on March 8, 2017 that indicates an arrearage in the amount of \$13,922.41.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct 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 March 17, 2017. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-21768) was filed on March 22, 2016 and dismissed on September 6, 2016, for Debtor's failure to confirm an amended plan. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr.

N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, the debtor made some payments under the plan in the prior bankruptcy case. Additionally, the case was dismissed only because the debtor failed to timely confirm an amended plan within 75 days of a conditional order to dismiss. Such failure was caused by the negligence of her attorney who set the hearing for confirmation more than 75 days after the conditional order to dismiss.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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

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

The Motion to Extend the Automatic Stay the Chapter 13 Plan filed by the 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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

6. [16-23116](#)-C-13 TAMARA ROBINSON
ALF-1 Ashley Amerio

OBJECTION TO CLAIM OF SETERUS,
INC.
2-8-17 [[39](#)]

Tentative Ruling: The Objection to Claim 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 8, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Numbe 7-1 of Seterus, Inc. is overruled.

Tamara Robinson, the Chapter 13 debtor, ("Objector") requests that the court disallow the claim of Seterus, Inc. ("Creditor"). The Claim is asserted to be secured in the amount of \$5,397.59. Objector asserts that the claim includes a post-filing escrow shortage in the amount of \$2,388.96 yet the debtor argues that she has made all ongoing mortgage payments since the filing of the case.

CREDITOR'S RESPONSE

Creditor responds that it intends to amend the proof of claim to subtract \$1,453.20 from its total amount as that amount was improperly claimed. The creditor included an accounting of the deficiency and argues that debtor has not overcome the burden necessary to disallow a proof of claim.

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).

Debtor has questioned the delinquency, however the creditor has offered evidence describing the accounting and making clear the delinquency owed to the creditor.

Based on the evidence before the court, the Objection to the Proof of Claim is overruled on the condition that the creditor does in fact amend the proof of claim as stated in the response.

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 Seterus, Inc., Creditor filed in this case by Chapter 13 debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 7-1 of Seterus, Inc. is overruled.

7. [17-20317](#)-C-13 ANTHONY SERENA
DPC-1 Edward Smith

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-1-17 [[15](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 1, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not filed his 2014 federal tax return.
- B. Trustee does not believe that debtor can make the plan payments required. Debtor's income listed on Schedule I reflected income during the fire season, which is not an average monthly gross income. Therefore, it does not appear that the debtor's monthly gross income is accurate.

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

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

A. Debtors list unsecured debt totaling \$85,845.00. Debtors additionally list certain debts as unknown including #4.1 (Chase Bank), #4.2 (Chase Bank), #4.18 (Navient), #4.19 (Navient) #4.20 (Navient) all of which are educational loans. Trustee cannot determine debtors eligibility under § 109(e).

B. The plan may be causing unfair discrimination to the unsecured creditors. Debtors appear to be paying student loans of \$332.00 per month as an unsecured creditor outside of the plan. Confirmation would allow the debtors to unfairly discriminate against general unsecured creditors in favor of the student loan.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the

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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. Debtor has failed to provide Trustee with federal tax return for year 2015.
- B. Debtor is delinquent in plan payments in the amount of \$6,452.00.
- C. Debtor is above median income and debtor's amended plan proposes a plan term of 57 months and proposes to pay just 1% to unsecured creditors.
- D. The plan calls for payments of \$2,386.00. Debtor appears to have net income in the amount of \$2,294.00. Thus, it is unclear how debtor will be able to make plan payments.
- E. The debt of Kia Motors Finance Co for a 2013 Kia Optima should be listed in Class 2 rather than Class 1.
- F. The plan fails liquidation as the debtors have non-exempt equity in their real property on 360 N. 1st Street, Dixon, California.

Creditor, Jeri Joanne Williams, additionally files an objection to confirmation citing the fact that not all of the debtor's disposable income for 5 years will be paid out under the plan.

Creditor, Kia Motors Finance, also objects to confirmation on the basis that it is listed in the wrong class and that the debtor has understated arrears owed to the creditor.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

THRU 12

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to attend the first meeting of creditors held on March 2, 2017.
- B. Debtor is delinquent in plan payments in the amount of \$4,300.00. Debtor has paid \$0 into the plan to date.
- C. The plan length exceeds 60 months. Debtor's plan fails to provide for the secured portion of IRS's claim.

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

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

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

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

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

11. [17-20326](#)-C-13 FRED KAPING
EAT-1 George Burke

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR WELLS FARGO
BANK, N.A.
2-20-17 [[20](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 20, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Creditor, Wells Fargo Bank, N.A., opposes confirmation of the Plan on the basis that:

A. The plan understates the amount of the ongoing monthly mortgage payment. Rather than \$2,581.00, the true amount is \$2,894.19.

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

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

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

The Objection to the Chapter 13 Plan filed by the

Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [17-20326](#)-C-13 FRED KAPING
USA-1 George Burke

OBJECTION TO CONFIRMATION OF
PLAN BY INTERNAL REVENUE
SERVICE
3-8-17 [[29](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 8, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Creditor, IRS, opposes confirmation of the Plan on the basis that:

- A. The debtor failed to file pre-petition tax returns by the date of the meeting of creditors.
- B. The plan fails to provide for payment of the IRS' secured claim.

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

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

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

The Objection to the Chapter 13 Plan filed by the

Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [17-21334](#)-C-13 AMUNDAYO EDWARDS
TLA-1 Thomas Amberg

MOTION TO VALUE COLLATERAL OF
EXETER FINANCE CORP.
3-7-17 [8]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 7, 2017. Twenty-eight days' notice is required.

The Motion to Value 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Exeter Finance Corp., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2011 Chevy Impala LS. The Debtor seeks to value the property at a replacement value of \$7,387.00 as of the petition filing date. As the owner, the 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).

The lien on the vehicle's title secures a purchase-money loan incurred in 2012, more than 910 days prior to the filing of the petition, with a balance of approximately \$13,585.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,387.00. *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 notes that the Creditor has not filed a proof of claim. However, the basis for the bifurcation of the Creditor's claim is not based solely on the fact that the Creditor has not filed a proof of claim. Therefore, the lien can still be bifurcated.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors 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 Exeter Finance Corp., secured by a purchase-money loan secured against the Debtors' 2011 Chevy Impala LS, is determined to be a secured claim in the amount of \$7,387.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

14. [16-22838](#)-C-13 CHARLES/HARU GARRETT
ALF-1 Ashley Amerio

CONTINUED OBJECTION TO CLAIM OF
BANK OF AMERICA, N.A.
12-8-16 [[24](#)]

Tentative Ruling: The Objection to Claim 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 8, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement is met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 6-1 of Bank of America, N.A. is overruled.

Debtors request that the court reduce the arrearage portion of Bank of America's claim number 6-1 to \$0 as the debtors are currently paying the arrears outside of the plan. The debtors assert that the original arrears amount of \$1,413.09 has been paid off in the amount of \$1,339.11 leaving just \$73.98 which will be paid off in February 2017.

Bank of America responded to the objection and requests that the court overrule the objection on the basis that it is entitled to its arrears.

The court is mindful that arrears must be paid off and that amending the claim to reflect \$0 in arrears is improper at this time. As a result, the court continued this hearing until April 4, 2017 to see if the arrears have been paid off.

The court notes that nothing has been filed since the previous hearing

held on March 7, 2017. As a result, the objection will be overruled absent additional evidence before the court.

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

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

The Objection to Claim of Bank of America, N.A., Creditor filed in this case by the Debtors 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 6-1 of Bank of America, N.A. is overruled.

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2017. 35 days' notice is required. That requirement was met.

The Motion to Confirm the 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). 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). 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. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 Chapter 13 Plan filed by the Debtors 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, Debtors' Chapter 13 Plan filed on February 22, 2017 is confirmed, and counsel for the Debtors 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.

16. [16-25445](#)-C-13 CAMMY WOOD
JPG-2 Jeffrey Guyton

MOTION TO CONFIRM FOURTH
AMENDED PLAN
2-16-17 [[144](#)]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Confirm Fourth Amended Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Confirm Fourth Amended Plan, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm Fourth Amended Plan.**

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.

A Motion to Confirm Fourth Amended Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Fourth Amended Plan is dismissed without prejudice.

17. [16-25445](#)-C-13 CAMMY WOOD
JPG-3 Jeffrey Guyton

OBJECTION TO CLAIM OF FRANK AND
LOUISE LEDESMA, CLAIM NUMBER 2
2-2-17 [[128](#)]

Tentative Ruling: The Objection to Claim 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 2, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2 of the Ledesmas is sustained and the claim is disallowed in the amount of \$12,950.50.

Cammy Wood, the Chapter 13 debtor ("Objector") requests that the court disallow the claim of Ledesma ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$251,290.94. Objector asserts that the claim incorrectly includes \$21,745.00 tacked on as attorney's fees from Yuba County Superior Court Case No. YCSCCV15-0000892. Debtor asserts that no attorney fee amount was approved by the superior court. Furthermore, counsel for the Ledesmas has not shown any evidence that the fees were reasonable or actually warranted.

CREDITOR'S OPPOSITION

Creditors assert that the Deed of Trust states that the Trustor agrees "to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by

Beneficiary to foreclosure this deed." Additionally, Creditor's counsel filed itemized billing records describing the work done both in the superior court case and the prior bankruptcy, 16-23555.

DEBTOR'S REPLY

Debtor replies that the attorney's fees in the state court arose primarily because counsel for the creditors spent time answering a complaint that he knew to be outdated and needed to be amended. Debtor requests that the claim be amended to disallow attorney's fees arising from the state court case until the state court case has concluded and the state court has decided the reasonableness of fees.

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).

The claim of the Ledesmas has prima facie validity. The two portions of the claim objected to are (1) attorney's fees for the superior court case (\$11,148.00) and associated costs (\$1,802.50) and (2) attorney's fees for the first chapter 13 case (\$7,275.00) and associated costs (\$3,322.39).

Debtor asserts that the attorney's fees related to the superior court case are not reasonable and requests that the bankruptcy court allow the superior court to decide the reasonableness of attorney's fees at the conclusion of the state court case. The court finds this argument compelling and will disallow \$11,148.00 plus \$1,802.50 from the claim so as to allow the superior court to make a determination on the reasonableness of the fees at the conclusion of the case.

Debtor makes no specific argument regarding the fees and costs related to the first bankruptcy beyond the claim that creditor acted improperly in the first bankruptcy. There is no reason to disallow the attorney's fees arising from the first bankruptcy case.

Based on the evidence before the court, the creditor's claim is disallowed in the amount of \$12,950.50. 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 the Ledesmas, Creditor filed in this case by Cammy Wood, Chapter 13 debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 2 of the Ledesmas is sustained and the claim is disallowed in the amount of \$12,950.50.

18. [17-20347](#)-C-13 JOSHUA/AMANDA JENNI
PPI-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY UNITED FEDERAL CREDIT
UNION
3-8-17 [[26](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 8, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Creditor, United Federal Credit Union, opposes confirmation of the Plan on the basis that:

- A. The plan improperly classifies Creditor's claim as the debtor's unpaid credit card debt to the Creditor is not unsecured, and is instead secured by the debtor's truck, trailer, and deposits.
- B. Creditor objects to the debtors' valuation of the Truck and Trailer.
- C. The plan fails to provide for Creditor's secured Credit Card Claim in either classes 2, 3, or 4 of the plan.
- D. With proper classification the plan is not feasible. Additionally, debtors failed to provide for the IRS's priority unsecured claim in the amount of \$25,286.31.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 1, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to continue the Objection to May 16, 2017 at 2:00 p.m.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$1,716.00 to date and debtor has paid \$0 into the plan.
- B. Debtor lists \$500.00 monthly assistance from his girlfriend but the debtor has not provided any declaration indicating an intention and ability to pay.
- C. The plan contemplates a lump sum payment in month 6 from the sale of debtor's residence or from proceeds of debtor's personal injury action. The debtor has not clearly identified his interest in the real property.
- D. The continued meeting of creditors is set for April 27, 2017 so the Trustee requests that this be continued to May 16, 2017.

The court will continue the hearing to May 16, 2017 at 2:00 p.m.

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is continued to May 16, 2017 at 2:00 p.m.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. Debtors are delinquent \$500.00 under the proposed plan. Debtors have paid \$8,900.00 into the plan to date.
- B. The modified plan fails to include the debtors' tax refunds.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied

and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2017. 35 days' notice is required. That requirement was met.

The Motion to Confirm the 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). 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). 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. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 Chapter 13 Plan filed by the Debtors 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, Debtors' Chapter 13 Plan filed on February 20, 2017 is confirmed, and counsel for the Debtors 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.

Tentative Ruling: The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 14, 2017. Fourteen days' notice is required.

The Motion to Approve Loan Modification 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by William and Lori Carpenter ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), has agreed to a loan modification which will reduce Debtor's mortgage payment to \$3,205.15 a month. The modification will set the interest rate to 3.875% and of the new principal balance of \$602,487.32, \$44,992.39 is deferred and treated as a non-interest bearing principal forbearance.

The Motion is supported by the Declaration of both William and Lori Carpenter. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This loan modification is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan

Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by [name of movant] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes William and Lori Carpenter ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 5028 El Cemonte Avenue, Davis, California, on such terms as stated in the Modification Agreement filed as Exhibit 2 in support of the Motion, Dckt. 110.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

A. The plan will complete in longer than 60 months. The payments proposed are \$1,350.30 and net trustee fees is \$1,266.30 per month. After monthly contract installment amounts are paid, only \$35.80 is available to be paid per month for all other claims. All other claims total \$6,457.70.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

24. [17-20359](#)-C-13 SEAN/AMY ROENSPIE
GEL-3 Gabriel Liberman

MOTION TO VALUE COLLATERAL OF
SIERRA CENTRAL CREDIT UNION
3-14-17 [[38](#)]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

Debtors having filed a "Withdrawal of Motion" for the pending Motion to Value Collateral, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Value Collateral, and good cause appearing, **the court dismisses without prejudice the Debtors' Motion to Value Collateral.**

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.

A Motion to Value Collateral having been filed by the Debtors, the Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral is dismissed without prejudice.

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 22, 2017. 28 days' notice is required. That requirement is met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is overruled as moot.

The debtor has claimed exemptions on Schedule C under CCCP § 703.140 and has checked the box "100% of fair market value, up to any applicable statutory limit." The debtor does not specify what subsection of § 703.140 is being used to exempt property.

Additionally, the court notes that the Trustee's motion to dismiss was granted pursuant to minute order on March 30, 2017.

The Trustee's objection is valid, however in light of the dismissal of this case, the objection will be overruled without prejudice 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 Exemptions filed by the 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 overruled as moot.

26. [17-20263](#)-C-13 MICHELE WILSON
DPC-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-1-17 [[21](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 1, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent \$220.00 in plan payments and has paid \$0 into the plan to date.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. Debtor's plan may not comply with applicable law as it does not authorize prior disbursements that the Trustee made under the terms of the debtor's prior plan. According to the claim filed by Carrington Mortgage/Bank of America the total monthly payment should be \$1,229.67.
- B. Debtor's plan fails to call for payments for the first four months of the plan. Since the debtor made no payments during those months, the Trustee made no mortgage payments. Debtor's plan fails to provide for the arrears.
- C. Debtor cannot make the payments as the plan fails to account for the post-petition arrears to be made to Carrington Mortgage/Bank of America.

The creditor, Bank of America, N.A., additionally opposes the plan as it does not cure the post-petition arrearages of Bank of America, N.A.'s claim.

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

not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

28. [17-20568](#)-C-13 LISA ORTIZ
DPC-1

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
2-27-17 [[28](#)]

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion for Denial of Discharge and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 27, 2017. 28 days' notice is required. That requirement is met.

The Motion for Denial of Discharge 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Denial of Discharge is granted.

Chapter 13 Trustee brings this motion for an order to determine that Debtor is not entitled to a discharge in this case. Debtor filed a Chapter 7 bankruptcy case on December 19, 2014 (14-32230) and received a discharge in that case on April 7, 2015. Debtor is not eligible to receive a discharge in this case as they received a discharge within the previous four years.

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

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

The Motion for Denial of Discharge filed by 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 is granted and the debtor, Lisa Ortiz, is ineligible for a discharge in case number 16-20568.

ALSO 30

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 7, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor appeared at the first meeting of creditors, however debtor has failed to provide the Trustee with certain documents and the meeting was continued. Currently, the Trustee does not have the information required to determine whether or not the case is suitable for confirmation.
- B. Debtor is delinquent in plan payments in the amount of \$1,368.47 and has paid \$0 into the plan to date.
- C. The Statement of Financial Affairs is incomplete and missing pertinent information.
- D. Debtor failed to disclose interest in a corporation Innovative Lending Solutions Inc.

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

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

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

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

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

30. [17-20571](#)-C-13 KATHRYN KREEGER
RCO-1 Mark Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY LAKEVIEW LOAN
SERVICING, LLC
3-9-17 [[33](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2017. Fourteen days' notice is required.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Creditor, Lakeview Loan Servicing, LLC, opposes confirmation of the Plan on the basis that:

A. Creditor's claim is secured by a Deed of Trust in the first position against the real property commonly known as 22870 Tree Farm Road, Colfax, California. Debtor's plan fails to cure the arrears owed to Creditor.

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

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

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

The Objection to the Chapter 13 Plan filed by the

Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. The debtor had failed to file a supplement to the motion and a supplemental declaration to support the motion, such as a declaration of the debtor to establish the factors allowing confirmation under § 1325(a).
- B. Debtor filed amended Schedules I and J yet has not filed any declaration explaining changes in income and expenses.

The debtor filed 2 declarations in an attempt to assuage the Trustee's concerns. However, the declarations fail to adequately explain the changes in expenses on the amended Schedule J. Additionally, debtor makes the legal conclusion that she has complied with §§ 1325(a), 1329(a), 1322(b), 1323(c) and all other provisions of the code. This is not correct. As a result, the debtor has potentially committed perjury at the behest of counsel.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

A. The plan has been modified to add pre-filing mortgage escrow shortage owed to Ditech Financial, LLC in the amount of \$235.66. Under the confirmed plan, Ditech Financial LLC is classified as Class 4 secured to be paid outside the plan. The Trustee believes that the debtor should handle this matter outside the Chapter 13 plan.

The court agrees with the Trustee's argument. The court does not understand the purpose of this modification, and reading the debtor's declaration, it is clear that she does not either. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by

the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). 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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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, Debtor's Chapter 13 Plan filed on February 8, 2017 is confirmed, and counsel for the 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.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to deny the Motion to Confirm the Plan.

The Trustee opposes confirmation on the basis that:

- A. The plan fails liquidation analysis as the debtor's non-exempt equity totals \$14,081.00 and the debtor is proposing a 0% dividend to unsecured creditors.
- B. The plan will require 67 months rather than the 60 months. The plan apparently does not take into account interest and trustee fees.
- C. Debtor has not been paying sufficient plan payments to pay the claim of HSBC/America's Service Co. and the plan has failed to provide for the cure of this post-petition delinquency.
- D. Debtor provides for 3 post-petition mortgage payments to be paid for a total of \$2,360. By the Trustee's calculation, 3 months of mortgage payments is \$5,022 without late fees. Furthermore, debtor has in fact missed at least 5 post-petition mortgage payments.
- E. Debtor cannot make the plan payments as the debtor's payment history shows his inability to make plan payments which continue to increase with

each amended plan. Debtor could not afford to pay \$1,500 and now proposes plan payments of \$2,100.

F. The plan includes additional provisions that lack certain portions of the language this court has allowed under the guise of Ensminger Provisions.

DEBTOR'S RESPONSE

Debtor filed a response to each argument:

1. Debtor will amend Schedule C to "allow for" non-exempt \$10,081 before the hearing.
2. The plan is short \$3,776.82 so the debtor proposes to increase the payments by \$100 per month.
3. Debtor will cure the post-petition delinquency to HSBC/America's Service Co. by increasing payments by \$100 per month.
4. Debtor will cure late mortgage payments by increasing payments by \$100 per month.
5. Debtor is awaiting notification of start day and first paycheck which upon being provided to the Trustee will show his ability to make payments.
6. Debtor will include the language in the additional terms as requested by the Trustee.

The court finds the Trustee's arguments valid. The debtor has not included any declaration with the response that proposes raising the plan payments by \$300 more. The debtor has not amended Schedule C, therefore the plan fails liquidation. The debtor does not appear to have adequately provided for the mortgage delinquency. Debtor has yet to prove ability to make payments. The court has no evidence that any of the debtor's counsel's assertions are valid. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan is not confirmed.

35. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE CONTINUED MOTION TO DISMISS
DPC-4 SALINAS CASE
Timothy Walsh 8-31-16 [[121](#)]

Tentative Ruling: The Motion to Dismiss 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).

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.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct 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 August 31, 2016. 28 days' notice is required. That requirement is met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 court's decision is to grant the motion to dismiss

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

- A. Debtor is \$3,520.00 delinquent in plan payments to the Trustee to date with another monthly payment of \$430.00 to become due prior to this hearing. Debtor has paid \$24,510.00 into the plan to date.

Debtor's Opposition

Debtors admit they are behind in payments and request that the hearing be continued to after November 25, 2016 in order to catchup on plan payments as November is the final month of the plan.

Trustee's Reply

Trustee had no opposition to the continuance of the hearing on this motion until after November 25, 2016.

Discussion

The motion was continued to hear in conjunction with the Motion to Modify for final payment amount and completion of plan. The court, not having evidence of payments being made, will grant the motion to dismiss.

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.
