

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 4, 2019 at 2:00 p.m.

1. [18-27800](#)-C-13 BECKY ALMEIDA MOTION TO CONFIRM PLAN
[PLC-2](#) Peter Cianchetta 4-23-19 [[37](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

~~The Motion to Confirm the Amended Plan is denied.~~

Becky Almeida ("Debtor") seeks confirmation of the Amended Plan because the Amended Plan provides fully payment to creditors of the full liquidation value of the Debtor's residence. Dckt. 40 (Declaration). The Amended Plan provides for 60 monthly payments (\$150.00 per month starting on May 25, 2019 for 20 months and \$1,442.66 per month for 36 months) and providing a 12% dividend to general unsecured creditors. Dckt. 38 (Amended Plan). The Plan also provides for a Lump Sum payment of \$43,675.84 upon the sale of the home within 6 months of Plan confirmation. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 15, 2019. Dckt. 44. The Trustee Opposes confirmation based on the following:

A. Debtor's Plan does not provide for regular monthly payments to the Schools Financial Credit Union until two years into the plan. Debtor is not providing for adequate protection payments prior to confirmation.

B. The Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$143,335.00 and Debtor is proposing a 12% dividend (\$38,009.67).

C. Debtor has not provided for Navy Federal Credit Union or Patelco Credit Union's Claim despite Debtor stating the creditor's have judgment liens against the Debtor's real property.

D. Debtor's plan relies on two Motions to Value to reduce the secured claims of Schools Financial Credit Union, however, no motions to value have been filed.

E. Debtor has not amended her Schedules to reflect a debt owed to Schools Financial Credit Union for a 2013 Chevrolet Volt.

F. Debtor may not be able to make all plan payments and the Trustee is unclear whether the proposed lump sum payment within 6 months of confirmation is intended to be in addition to the proposed 60 payments.

CREDITOR'S OPPOSITION

Schools Financial Credit Union ("Creditor") holding a secured claim filed an Opposition on May 20, 2019. Dckt. 59. The Opposes confirmation based on the following:

A. The Creditor objects to the treatment of its secured claim with respect to a 2008 Toyota Tundra. Debtor's plan does not provide for the contract interest rate and the proposed plan payments are insufficient to provide for its full claim or provide for adequate protection payments pending confirmation.

B. The Creditor objects to the inclusion of the debt with respect to a 2012 Chevrolet Volt. The Debtor does not appear to be a co-debtor the debt and in the alternative the Debtor does not provide for the contracted interest rate or adequate protection payments pending confirmation.

C. The Chapter 13 Plan is not feasible as there is insufficient information to establish Debtor can pay the proposed stepped up payments beginning in month 25.

D. The Petition and the Plan were not filed in good faith. Plan includes discrepancies regarding Debtor's marital status and domestic support obligations - despite the Debtor's attorney also representing Debtor in the divorce proceeding.

Creditor also notes that it has filed two different Motions for Relief from automatic stay also set for hearing on June 4, 2019.

DISCUSSION:

At the hearing ----

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

Lannis Pope and Jamie Pope ("Debtors") seek confirmation of the Modified Plan because Debtors surrendered real property and are no longer obligated to make payments with respect to that property. Dckt. 116 (Declaration). The Modified Plan provides for 60 monthly payments of \$360.00 and provides for a 15% dividend to general unsecured creditors. Dckt. 117 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 17, 2019. Dckt. 121. The Trustee states that the confirmed plan includes creditor Travis Credit Union in Class 2 with a claim of \$9,637.00 to be paid 4.5% interest and monthly dividend of \$180.00. The proposed plan moves the creditor to Class 1 with a monthly post-petition of \$117.85 and \$0.00 in arrears. The Trustee does not oppose the changed treatment but requests that the treatment of the creditor under the previous confirmed plan be approved. The Trustee also states that Section 7 incorrectly states that plan payments began in November when the first payment was due on October 25, 2016.

The Trustee does not oppose confirmation if the Debtor agrees to provide for these modifications in the order confirming.

DISCUSSION:

The Modified Plan, providing for modifications requested by the Trustee, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Lannis Pope and Jamie Pope ("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, and Debtor's Modified Chapter 13 Plan filed on April 20, 2019, including the requested modifications, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is ~~XXXXXX~~.

This Motion requests an order avoiding the judicial lien of Ronny Dhaliwal ("Creditor") against property of Vishaal Virk ("Debtor") commonly known as 9646 Rivage Way, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$344,568.66. An abstract of judgment was recorded with Sacramento County on December 12, 2019, that encumbers the Property.

Debtor notes that the parties previously arrived at an agreement to value the secured portion of the lien at \$15,045.51 and requests that the court enter an order to that effect.

TRUSTEE'S RESPONSE:

The Trustee notes that Debtor and Creditor have been involved in an Adversary Proceeding (14-2263) regarding dischargeability, an Objection to the claim (Dckt. 43), a Motion to Avoid Lien (Dckt. 113), and a Motion to reconsider judgment on Objection to Claims (Dckt. 143). The Debtor's Motion to Avoid Lien was heard on November 9, 2015 and the civil minutes reflect that the Motion was granted as resolved by Stipulation with the order to be prepared by Peter Macaluso and Sean Gavin. No stipulation has been filed with the court since November 9, 2015.

Additionally, the Trustee notes the court denied Debtor's Motion to Modify (Dckt. 234) based on the fact that there was an unresolved Contested Matter Motion to Avoid Lien of Ronny Dhaliwal. It appears that Debtor is now

trying to re-litigate the matter here.

CREDITOR'S RESPONSE:

Creditor responds noting a long history with the Debtor, including events that predate this proceeding, including but not limited to, stated events involving Debtor and Creditor's father.

The Creditor does not indicate whether the relief sought by Debtor here is identical to the agreement the parties arrived in the prior Motion to Avoid Creditor's Lien back in November of 2015. The court requests that Creditor be prepared to articulate the terms of the stipulation agreed to in the original lien avoidance action in 2015 and whether the relief sought by Debtor deviates from that original agreement.

DEBTOR'S RESPONSE:

Debtor responds that the parties had previously arrived at an agreement in the originally filed Motion to Avoid Lien. Debtor attaches the transcript from the hearing where the parties stated their agreement and intention to draft an order for the court. Debtor's counsel acknowledges that no such order was provided to the court. Debtor's counsel claims, nearly four years later, that he is unable to have the order signed. Debtor chose to initiate a new motion to avoid lien rather than address the original motion.

DISCUSSION:

At the hearing -----

The court notes that Creditor, who filed pro se, claims an inability to obtain counsel. The court notes again, as it did on May 21, 2019 that Creditor's counsel has not obtained court approval to withdraw from representation.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Vishaal Virk ("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 Avoid Lien is ~~xxxxxx~~.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorne, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is continued to June 11, 2019 at 2:00 p.m.

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

- A. Debtor's plan relies on a Motion to Value the secured claim of creditor American Credit Acceptance.

DEBTOR'S RESPONSE:

Debtor states that a Motion to Value has since been filed and is set for hearing on June 11, 2019. Debtor requests that the court continue the hearing on the Motion to Confirm be continued to June 11, 2019.

DISCUSSION:

Trustee's objection is well-taken as the Plan would not be feasible if Debtor does not prevail on its Motion to Value. Accordingly, the hearing will be continued to allow Debtor's Motion to Value to be resolved.

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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is continued to June 11, 2019 at 2:00 p.m.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Incur Debt is ~~XXXXXX~~.

Tiffany Freitas ("Debtor") seeks permission to incur Post-Petition Debt in order to obtain a 401(k) loan in order to purchase a vehicle. Debtor states that her vehicle was deemed totaled in an automotive accident. Debtor notes that the other vehicle listed on her petition is used by her daughter and Debtor needs her own vehicle. Debtor states that the loan is for \$8,636.00 with a fixed interest rate of 6.5% to be repaid over 72 payments made twice a month from Debtor's pay check. The origination fee is \$50.00 and the total financing charges would be \$930.96. Debtor asserts that the loan will not affect her Chapter 13 Plan. The Debtor is silent as to whether the vehicle was insured at the time of the accident and whether Debtor was entitled to any insurance proceeds.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358

B.R. 714, 716 (Bankr. W.D. Ky. 2007).

At the hearing -----

The Motion is ~~xxxx~~

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 Incur Debt filed by Tiffany Freitas ("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 ~~xxxx~~.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is denied.

Dewayne Williams ("Debtor") seeks confirmation of the Modified Plan because Debtor states, without any specifics, that he did not initially propose a reasonable budget and missed payments. Dckt. 128 (Declaration). The Modified Plan proposes monthly payments of \$2,350.00 for the remainder of the plan and provides a 0% dividend to general unsecured creditors. Dckt. 129 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 17, 2019. Dckt. 140. The Trustee Opposes Confirmation based on the following:

- A. The Plan does not complete timely and would need to increase by \$402.00 effective May 2019 in order for it to do so.
- B. The format of the propose plan does not appear to be consistent with GO. 18-03.
- C. The Additional Provisions are not placed on a separate page and should be treated as void, per the language of Section. The Trustee notes that the contents of the provisions do not raise additional objections.

D. The confirmed Plan provides for a 4.25% interest to class 2 creditor Wells Fargo while the proposed plan provides for 0.00% interest. The Trustee has already disbursed \$854.47 in interest to the creditor which is not authorized in the proposed plan. Additionally, payments totaling \$2,267.88 have been paid to Chrysler Capital prior to the surrender of the secured asset which also have not been authorized in the proposed Plan.

DISCUSSION:

At the hearing -----

Debtor's Plan modifies the required form, does not authorize payments already made by the Trustee, and does not complete timely.

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

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

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

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

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

7. [19-21741](#)-C-13 ROLDAN SEBEDIA
[MJD-1](#) Matthew DeCaminada

MOTION TO APPROVE LOAN
MODIFICATION
4-17-19 [[22](#)]

Thru #8

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Approve Trial Loan Modification is granted.

The Motion to Approve Trial Loan Modification filed by Name of Roldan Sebedia ("Debtor") seeks court approval for Debtor to incur post-petition credit. Arvest Central Mortgage Company ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$3,256.29 per month to \$3,076.51 per month.

The Motion is supported by the Declaration of Debtor. Dckt. 25. 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.

The Chapter 13 Trustee filed a Response on May 17, 2019 to note that the Creditor is included in Class 4 of the modified Plan set for hearing on June 4, 2019 but does not otherwise oppose the modification.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 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 Loan Modification filed by Roldan Sebedia ("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 court authorizes Roldan Sebedia to amend the terms of the loan with Arvest Central Mortgage Company ("Creditor"), which is secured by the real property commonly known as 5073 Trailside Drive, El Dorado, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 24).

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Roldan Sebedia ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on May 16, 2019. Dckt. 41. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 17, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Amy Loafea ("Debtor") seeks confirmation of the Amended Plan without identifying what has been modified. Dckt. 59 (Declaration). The court notes that previous motion to confirm was denied for not filing all required tax returns. Dckt. 49. The Amended Plan proposes monthly payments of \$753.00 for the remaining 56 months and the plan proposes a 0% dividend to general unsecured creditors. Dckt. 62 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 16, 2019. Dckt. 65. The Debtor's plan relies on a Motion to Value; however, the Debtor does not have a Motion to Value pending. The Trustee notes that Debtor's previous Motion to Value was dismissed without prejudice on April 2, 2019. Dckt. 56. The Plan is not feasible absent Debtor prevailing on such Motion.

DISCUSSION:

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

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and

1325(a) and is not confirmed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is ~~xxxxxx~~.

Lynell Green ("Debtor") seeks confirmation of the Amended Plan because Debtor seeks to reduce the plan to 36 months. Dckt. 38 (Declaration). The Amended Plan proposes monthly payments of \$702.00 for 36 months and proposes a 0% dividend to the general unsecured creditors. Dckt. 37 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 14, 2019. Dckt. 48. The Trustee noted that the Debtor's Plan relied on a Motion to Value the claim of the IRS which has been resolved in Debtor's favor at the May 21, 2019 hearing.

The Trustee also noted that Debtor has not provided the Trustee with all required business records including the 2016 tax return, 6 months of bank statements, proof of license and insurance or written statements that no documents exist. 11 U.S.C. § 521(e)(2)(A).

DISCUSSION:

At the hearing Debtor addressed whether all required records have been provided to the Trustee -----

Debtor has failed to timely provide the Chapter 13 Trustee with

business documents including:

- A. 2016 tax returns,
- B. Six months of profit and loss statements,
- C. Proof of license and insurance or written statement that no such documentation exists.

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

The Amended Plan ~~xxxx~~ with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is ~~xxxx~~

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is ~~xxxx~~

11. [19-21860](#)-C-13 LEONID/LYUDMILA BANAR
[RDW](#)-2 Mark Shmorgon

OBJECTION TO CONFIRMATION OF
PLAN BY PARTNERS FOR PAYMENT
RELIEF DE III, LLC
5-9-19 [[37](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is continued to June 25, 2019 at 2:00 p.m.

Partners for Payment Relief DA III, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Creditor is not fully provided for, assuming the court vacates its Order Valuing Creditor's Secured Claim and Debtor does not prevail at valuing its claim a \$0.00. On May 21, 2019 the court granted Creditor's Motion to Vacate the Order and set further briefing regarding Debtor's Motion to Value. The hearing on Debtor's Motion to Value is set for June 25, 2019.

Creditor's objections are well-taken. Debtor's Plan relies on a Motion to Value and is not otherwise feasible.

At the hearing -----

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 Partners for Payment Relief DA III, LLC ("Creditor") holding a secured claim] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is continued to June 25, 2019 at 2:00 p.m.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 23, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

Elmer Crespin and Alma Crespin ("Debtors") seek confirmation of the Modified Plan because to address missed payments due medical bills and reduced income. Dckt. 250 (Declaration). The Modified Plan proposes monthly payments of \$3,000.00 starting on April 25, 2019 for 20 months and provides a 0% dividend to general unsecured creditors. Dckt. 251 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION:

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 16, 2019. Dckt. 259. The Trustee states that Debtors' modified plan proposes to increase post-petition mortgage arrears in Class 1 from \$5,765.18 to \$11,530.36, when only \$10,081.30 is due. The Trustee notes that he has no opposition to correcting this in the order confirming.

DEBTORS' REPLY:

Debtors agree with the Trustee's assessment and request that the change be made in the Order confirming the Modified Plan.

DISCUSSION:

Provided that the Order confirming corrects the Class 1 arrearage, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Elmer Crespin and Alma Crespin ("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, and Debtor's Modified Chapter 13 Plan filed on April 23, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Wells Fargo Bank, N.A. ("Creditor") is \$2,500.00, and Creditor's secured claim is determined to have a value of \$2,500.00.

The Motion filed by Tamara Geren ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Ford Mustang ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$2,500.00 as of the petition filing date based on the fact that the vehicle has 100,000 miles and requires repairs. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE:

On May 16, 2019, the Chapter 13 Trustee filed a Response. Dckt. 26. The Trustee notes that Creditor filed a Proof of Claim (3-1) asserting the value of the vehicle as \$4,875.00. The Trustee also notes that Debtor's \$2,500.00 valuation was first presented on the date this motion and Amended Schedules were filed. Debtor's original schedules valued the vehicle at \$3,506.00.

DISCUSSION:

The lien on the Vehicle's title secures a purchase-money loan incurred on February 16, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,864.33. Therefore, Creditor's claim secured by a lien on the asset's title

is under-collateralized. Creditor's secured claim is determined to be in the amount of \$2,500.00 the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Tamara Geren ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A. ("Creditor") secured by an asset described as 2005 Ford Mustang ("Vehicle") is determined to be a secured claim in the amount of \$2,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$2,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Michael Tharp and Carrie Tharp ("Debtors") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on May 17, 2019. Dckt. 79. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Michael Tharp and Carrie Tharp ("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, and Debtor's Amended Chapter 13 Plan filed on April 20, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #17

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2019. 14 days' notice is required. That requirement was met.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on May 31, 2019. Dckt. 40. Filing a new plan is a de facto withdrawal of the pending plan. 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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2019. 14 days' notice is required. That requirement was met.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on May 31, 2019. Dckt. 40. Filing a new plan is a de facto withdrawal of the pending plan. 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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2019. 14 days' notice is required. That requirement was met.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan on May 31, 2019. Dckt. 40. Filing a new plan is a de facto withdrawal of the pending plan. 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, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2019. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Jason Rupchock and Tiffanie Rupchock ("Debtors") filed a Second Amended Plan and corresponding Motion to Confirm on May 24, 2019. Dckts. 60, 63. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

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

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

Thru #20

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Reconsider is ~~xxxx~~.

Bosco Credit, LLC, ("Movant") request that the court vacate the Order Valuing Movant's Secured Claim entered on March 11, 2019 (Dckt. 27) and reconsider the underlying Motion. Dckt. 71. The grounds stated with particularity in the Motion, as required by Federal Rule of Bankruptcy Procedure 9013, consist of the following argument, Movant did not receive notice.

Movant does not state in its motion the address or addresses that would have constituted proper service, or whether those addresses were listed on Debtor's proof of service. The court is unable to determine whether Movant's argument is that Debtor did not list an address that Movant could be served at on its Proof of Service, or whether, the Notice, despite the address being listed, was not delivered to Movant.

Movant provides a Declaration (Dckt. 73) from an employee with the first name Gina and last name illegible, that no record of service by Debtor of the Motion to Value was logged in Movant's electronic system. The court notes that the address reflected in the Declaration does appear on Debtor's proof of service.

APPLICABLE LAW

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

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

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

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the

practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Here, Movant asserts that it was not properly served because it claims Notice was not logged int its electronic mail receipt system.

At the hearing -----.

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

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

The Motion to Vacate filed by Bosco Credit, LLC, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxx**.

20. [19-20980](#)-C-13 PATRICIA SITTINGER
[RJ-4](#) Richard Jare

OBJECTION TO CLAIM OF BOSCO
CREDIT, LLC, CLAIM NUMBER 4
5-5-19 [[63](#)]

No Tentative Issued.

21. [12-21196](#)-C-13 RYAN CAMPBELL AND MICHELE
[BHR](#)-2 FLORES-CAMPBELL
Brett Ramsaur

CONTINUED MOTION FOR CONTEMPT
2-25-19 [[90](#)]

NO TENTATIVE ISSUED

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

~~The Motion to Confirm the Amended Plan is denied.~~

Rebeckah Gold ("Debtor") seeks confirmation of the Amended Plan because Debtor determined that the initial valuation of her personal residence was overstated and has since filed amended schedules to reduce the stated value of the home and reduce the monthly payments of \$500.00. Dckt. 34 (Declaration). The Amended Plan proposes monthly payments of \$350.00 for 36 months providing a 12% dividend to the general unsecured creditors. Dckt. 37 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 15, 2019. Dckt. 48. The Trustee's Opposition is based on the following:

A. The Plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). The Schedules filed by Debtor are marked both Amended and Supplemental. Additionally, the Schedules were not filed in the main proceeding but merely as an exhibit to the Motion to Confirm.

B. Debtor increased the tax withholding from \$551.57 to \$1,516.67 without any explanation. The Trustee notes that if Debtor's income is the same there would likely be a tax refund of \$3,425.74 in the next tax year.

C. Debtor removes an expense entitled "Allotment" without explanation from the Schedule J. The Trustee states that this appeared to be a loan to Debtor's mother.

D. The Trustee previously Objected to Debtor's Plan proposing a \$500.00 payment as not being the Debtor's best effort. Here the Debtor reduces the proposed Plan payments. Debtor may not have disclosed all payments over \$600.00 within the 90 day period before filing the petition.

DEBTOR'S REPLY:

The Debtor filed a Reply to the Trustee's Opposition on May 29, 2019. Dckt. 51. The Debtor states that despite the Schedules being marked both Amended and Supplemental, they should have been marked only as Supplemental. Debtor states that due to an asserted IRS "override", Debtor is unable to make changes to her federal income tax withholdings. Debtor proposes that any future tax return over \$2,000.00 be paid to the Trustee. Debtor states that the "Allotments" identified on Debtor's prior paystubs were for automatic repayment of debts, one to BMG loans and another to Debtor's mother. The "allotments" were erroneously listed on the original Schedule I.

DISCUSSION:

~~At the hearing ---~~

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Craig Uhrmacher and Jade Uhrmacher ("Debtors") seek confirmation of their First Amended Plan because to address providing for administrative costs and increase the payments to secured creditor BMW Finance. Dckt. 18 (Declaration). The Amended Plan provides for 36 monthly payments of \$849.37. Dckt. 17 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION:

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 16, 2019. Dckt. 20. The Trustee noted that the Notice was insufficient, however, the Debtors amended their notice and reset the hearing on confirmation to June 4, 2019 to address the insufficient notice. The Trustee also stated that Debtors had not made all required plan payments. The Debtors are delinquent \$849.37, with another plan payment due prior to the hearing. The Debtors have paid \$0.00 into the plan.

DISCUSSION:

The Chapter 13 Trustee asserts that Debtor is \$849.37 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the

Plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Absent evidence that the delinquency has been cured, the Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Craig Uhrmacher and Jade Uhrmacher ("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 to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

24. [19-21066](#)-C-13 KRISTINA BOYD
[RDG](#)-2 Mikalah Liviakis

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-22-19 [[21](#)]

Transferred from Dept. D to Dept. C

25. [19-21066](#)-C-13 KRISTINA BOYD
[RDG](#)-1 Mikalah Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-22-19 [[24](#)]

Transferred from Dept. D to Dept. C

26. [19-21066](#)-C-13 KRISTINA BOYD
[MBW](#)-1 Mikalah Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY SAFE
CREDIT UNION
4-2-19 [[15](#)]

Transferred from Dept. D to Dept. C