

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

June 30, 2015 at 2:00 P.M.

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1. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE CONTINUED MOTION TO MODIFY PLAN  
TJW-2 SALINAS 4-13-15 [[55](#)]  
Timothy Walsh

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**Tentative Ruling:** The Motion to Confirm the 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). 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.**

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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 April 13, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 Modified Plan.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The declaration filed by Debtors states that the Debtor lost his job in late 2014. Dckt. 57. Debtors have not filed supplemental Schedules I or J in support of this motion. The most recent Schedule I or J, filed over 29 months ago, reflect that Debtor was employed and Debtor's spouse was receiving unemployment.
2. Debtors are paid ahead \$22.00 under the terms of the proposed plan.

The modified 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 Modified 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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2. [15-22302](#)-C-13 D JACK  
DPC-1 Mark Wolff

MOTION FOR DENIAL OF DISCHARGE  
OF DEBTOR UNDER 11 U.S.C.  
SECTION 727(A)  
5-8-15 [[29](#)]

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 creditors, and Office of the United States Trustee on May 8, 201. Twenty-eight days' notice is required. That requirement was met.

The Objection to 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). The defaults of the non-responding parties and other parties in interest are entered.

**The court's decision is to sustain the Objection.**

#### SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtors are not eligible to receive a discharge because Debtor's received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtors received a Chapter 7 discharge on December 28, 2011 (Case No. 11-41834). Debtors filed this Chapter 13 case on March 23, 2015.

#### DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtors are not entitled to a discharge in this Chapter 13 case because Debtors received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection 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 the 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 Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-22302.

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3. [15-23202](#)-C-13 MICHAEL SCOTT AND  
DPC-2 MICHELLE GUSTAFSON  
Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
5-28-15 [[18](#)]

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**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).**

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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 May 28, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$2,649 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,649 is due on June 25, 2015. Debtor has paid \$0.00 into the plan to date.

## **Debtors' Response**

Debtors' Attorneys have been trying to get in contact with Debtors to resolve the issues brought up by the Trustee, but at this time have been unable to do so.

## **Discussion**

As the Trustee's concerns highlight, 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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**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).**  
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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 May 14, 2015. 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. At the hearing -----.

**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 third bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-26948) was dismissed for failing to comply with the terms of the Order Granting Extension. Debtor's second bankruptcy case (No. 13-28475) was dismissed when Debtors fell into a brief financial spell that prevented them from making their monthly plan payments to the Trustee. 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.

**Previously**

The hearing was continued from June 2, 2015 (leaving the stay in effect) to allow time to evaluate the posture of the Plan (i.e. Plan payments). There is currently a (Dckt 13) motion to extend the deadline to file documents.

## Discussion

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, Debtors state that Debtors caught up their delinquent plan payments related to their most recent prior filing; however, the case was dismissed the day prior. The Motion states that Debtors experienced a brief and temporary financial malady that has since been corrected. Debtor, Robert Trabert, works out of town and Robert's employer provides for reimbursement of expenses on the 15th of each month. In April of 2015, Robert had accumulated over \$3,000 in expenses; however, these expenses were not reimbursed by his employer. This cause Debtors to financially survive for more than two weeks before the reimbursement was provided.

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. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

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.

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5. [12-23306](#)-C-13 EDWARD/JUSTINA BONNAFON  
CYB-2 Candace Brooks

MOTION TO ALLOW FURTHER  
ADMINISTRATION OF A CASE FOR  
SUBSTITUTION AS THE  
REPRESENTATIVE FOR OR SUCCESSOR  
TO DECEASED DEBTOR AND/OR  
MOTION TO WAIVE THE CERTIFICATE  
REQUIREMENTS FOR JOINT DEBTOR  
TO COMPLETE CERTIFICATE 1328  
AND 522  
6-15-15 [[39](#)]

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**Tentative Ruling:** The Motion for Further Administration of a Case 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).**

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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, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2015. 14 days' notice is required. That requirement was met.

The Motion 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. At the hearing -----  
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**The Motion for Further Administration of a Case is granted.**

Debtor Justina Bonnafon moves the court of an order allowing further administration of a case under FRBP 1016; substitution as the representative for or successor to the deceased joint debtor under FRCP 25(a); and waiver of the requirements for joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q).

Debtor gave notice of the death of her husband and co-petitioner

on May 8, 2015 by filing a declaration and accompanying death certificate giving the court and interested parties notice.

Debtor is 76 years of age. If the case is converted, Debtor would not be entitled to strip the secondary lien on her property. Debtor is entitled to life insurance proceeds in the amount of \$44,344.11. Debtor will file amended schedules.

Debtor is the successor of the estate of Edward Bonnafon and wishes to substitute in as successor or representative of Mr. Bonnafon.

**The Chapter 13 Trustee filed a statement of non-opposition.**

**Discussion**

The Federal Rules of Bankruptcy Procedure allow normal administration of a Chapter 13 case subsequent to the death of a debtor if further administration is possible and in the best interests of parties. Fed. R. Bankr. P. 1016. As the motion has established, further administration of this case is in the best interest of the surviving co-debtor.

The Federal Rules of Civil Procedure Rule 25 made applicable in the Federal Rules of Bankruptcy Procedure allow substitution of a party in contested matters. Fed. R. Bankr. P. 7025, 1018, and 9014. Appointment of a representative for a deceased Chapter 13 debtor in furtherance of case administration is authorized by Federal Rule of Bankruptcy Procedure Rule 1004.1. Accordingly, the court may appoint Justina Bonnafon to represent the deceased joint-debtor in this case and in contested matters related thereto. The court finds such appointment appropriate considering that Justina Bonnafon is administrator of the deceased debtor's estate pursuant to state law.

It is impossible for the deceased joint debtor to complete the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q). Waiver of these requirements as to the deceased debtor is therefore appropriate.

The motion is granted and the case may be further administered; Justina Bonnafon may substitute as the representative for or successor to the deceased joint debtor, Edward Bonnafon, under FRCP 25(a) and FRBP 1004.1; and the 11 U.S.C. § 1328 certificate and certificate of Chapter 13 debtor regarding 11 U.S.C. § 522(q) requirements are waived as to Edward Bonnafon.

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 Further Administration of a Case 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 case may be further administered; Justina Bonnafon may substitute as the representative for or successor to the deceased joint debtor, Edward Bonnafon; and the 11 U.S.C. § 1328 certificate

and certificate of Chapter 13 debtor regarding 11 U.S.C. §  
522(q) requirements are waived as to Edward Bonnafon.

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**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).**  
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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 May 28, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$425 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$425 is due on June 25, 2015. Debtor has paid \$0.00 into the plan to date.
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11

U.S.C. § 521(a)(1)(B)(iv).

As the Trustee's concerns highlight, 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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**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).**

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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 May 28, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$65 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$65 is due on June 25, 2015. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not appear at the First Meeting of Creditors held on May

21, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

As the Trustee's concerns highlight, 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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8. [14-23926](#)-C-13 DANIEL/MARY GUTTEREZ  
PLC-5 Peter Cianchetta

OBJECTION TO CLAIM OF OLD  
REPUBLIC INSURANCE COMPANY,  
CLAIM NUMBER 8  
4-29-15 [[94](#)]

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**Final Ruling: No appearance at the June 30, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee], parties requesting special notice, and Office of the United States Trustee on April 29, 2015. 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 was 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim number 8 of Old Republic Insurance Company is sustained and the claim is disallowed in its entirety.**

Daniel and Mary Gutierrez ("Objectors") request that the court disallow the claim of Old Republic Insurance Company ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$68,862.93. Objector asserts that the Claim has not been timely filed. *See Fed. R. Bankr. P. 3002(c)*. The deadline for filing proofs of claim in this case is August 20, 2014. Notice of Bankruptcy Filing and Deadlines, Dckt. 70.

Objectors also request disallowance of the Claim on the basis that no debt exists. Debtors refinanced their then existing loans through Countrywide with two new loans replacing their existing loans. Bank of America was the successor in interest to Countrywide through merger. As the holder of both the Senior and Junior liens, upon foreclosing on the Senior deed of trust, Bank of America is prevented from enforcing the junior deed of trust. The foreclosure sale was to the beneficiary, the sale being upon a credit bid.

Here, Bank of America held both the first and second liens by its acquisition of Countrywide. Upon foreclosing on the First Deed of Trust, the Junior note was extinguished pursuant to CCP § 580(d). Old Republic Insurance Company may be the successor, however after the sale of Bank of America's interest as holder of the first, no deficiency can lie in the second.

**The Chapter 13 Trustee filed a statement of non-opposition.**

**Discussion**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was August 20, 2014. The Creditor's Proof of Claim was filed January 20, 2015.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Old Republic Insurance Company, filed in this case by Daniel and Mary Gutierrez, 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 8 of Old Republic Insurance Company is sustained and the claim is disallowed in its entirety.

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9. [11-32430](#)-C-13 ROOSEVELT/RAULETTE MOTION TO APPROVE LOAN  
BLG-11 MCCLINTON MODIFICATION  
Pauldeep Bains 6-1-15 [[155](#)]

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Tentative Ruling: The Motion to Approve Loan Modification 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.**

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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 the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 1, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Approve Loan Modification is denied.**

The Motion to Approve Loan Modification filed by Debtor seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing("Creditor") has agreed to a loan modification. The terms of the modified loan will be as follows:

Starting June 1, 2015 the interest rate will change to 3.37500%. The monthly principle and interest payment amount will be \$938.43 plus the estimated monthly escrow amount of \$378.71 (adjusts annually after 1 year) for a total monthly payment of \$1,317.14. The monthly Payment will begin July 1, 2015. The number of monthly payments will be 261 (maturity date of March 1, 2037). The new principle balance of the note will be \$481,589.54 of which \$234,589.54 will be deferred and treated as a non-interest bearing principle forbearance. The deferred principle balance is eligible for forgiveness provided there is no default on payments such that the equivalent of three monthly payments are due and unpaid on the last day of any month, on each of

the first, second and third anniversaries of April 1, 2015, the Servicer shall reduce the deferred principal balance in installments equal to one-third of the deferred principle reduction amount. Provided that all payments are made in accordance with the loan terms and the interest rate does not change for the entire loan term a balloon payment of \$153,284.26 will be due on March 1, 2037.

The Motion is supported by the Declaration of Debtor. 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.

### **Trustee's Opposition**

The Trustee does not oppose the terms of the loan modification. Rather, the Trustee is uncertain that the loan modification offeror is the holder of the existing note.

Wells Fargo Bank, N.A. filed Claim 2 indicating that it is the holder of the note. A Transfer of Claim Other than for Security was filed (Dckt. 104) transferring the claim to Wells Fargo Association, c/o Ocwen Loan Servicing, LLC with an attached Limited Power of Attorney allowing American Home Mortgage Servicing, Inc. with power over certain transactions (which does not appear to include loan modifications).

### **Discussion**

The court is not prepared to approve the loan modification until the Trustee's concerns are addressed.

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

**IT IS ORDERED** that the Motion is denied and court does not authorize Roosevelt McClinton ("Debtor") to amend the terms of the loan with Ocwen Loan Servicing, which is secured by the real property commonly known as 1005 Blackspur Ct, Suisun City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 155.

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**Tentative Ruling:** The Motion to Confirm the 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). 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 May 15, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 Modified Plan.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The Plan will complete in 77 months as opposed to 39 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The modified 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 Modified 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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**Tentative Ruling:** The Motion to Sell Property 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 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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 9, 2016. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

The Motion to Sell Property 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. At the hearing -----.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 1303. Here Movant proposes to sell the "Property" described as follows:

- A. 1085 Syracuse Circle, Vacaville, California

The proposed purchaser of the Property is Barbee Trust and the terms of the sale are a price of \$300,000 with a down payment of \$295,000 with escrow closing 10 days after acceptance from buyer.

**The Chapter 13 Trustee filed a statement of non-opposition.**

**Discussion**

For this Motion, the Movant has established .....

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

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

The Motion to Sell Property filed by Laura Orr, the 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 Laura Orr, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 1303 to Barbee Trust or nominee ("Buyer"), the Property commonly known as 1085 Syracuse Circle, Vacaville, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$300,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 37, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 5, 2015. 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 May 5, 2015 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.

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13. [15-22737](#)-C-13 ANGELA SEIBERT  
DAO-2 Dale Orthner

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA, INC.  
5-14-15 [[29](#)]

**Thru #16**

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 14, 2015. Twenty-eight days' notice is required. That requirement was met.

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 Santander Consumer USA, Inc., "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject property commonly known as a 2007 Kia Sportage vehicle. The Debtor seeks to value the property at a fair market value of \$7,000 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).

Santander Consumer USA, Inc. holds a security interest in the subject property with a balance of approximately \$13,734.44. Therefore, the respondent creditor's claim secured by the subject property is partially under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,000. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) 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 Santander Consumer USA, Inc.'s security interest in a 2007 Kia Sportage vehicle, is determined to be a secured claim in the amount of \$7,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the subject property is \$7,000.

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14. [15-22737](#)-C-13 ANGELA SEIBERT OBJECTION TO CLAIM OF SANTANDER  
DAO-1 Dale Orthner CONSUMER USA, INC., CLAIM  
NUMBER 2  
5-14-15 [[24](#)]

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**Final Ruling: No appearance at the June 30, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 14, 2015. 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 was 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 2 of Santander Consumer USA, Inc. is sustained.**

The Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Santander Consumer USA, Inc. ("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 \$13,734.44 secured by a vehicle. Objector asserts that Creditor's purchase money security interest securing the debt was incurred outside of the 910-day period preceding the date of the filing of the petition.

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).

**Discussion**

Debtor filed her petition on April 3, 2015. The Claim states that the financing date was October 6, 2012 (909 days pre-petition). Debtor asserts that the financing date was September 25, 2012 (more than 910 days pre-petition).

Debtor filed a declaration stating that the financing date was September 25, 2012. Debtor filed exhibits consisting of a sales contract and subsidiary contracts dated September 25, 2012.

Based on the evidence before the court, the creditor's claim is disallowed as incurred on October 6, 2012. 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 Santander Consumer USA, Inc. , Creditor filed in this case by the 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 Santander Consumer USA, Inc. is sustained and the debt is deemed to have been incurred on September 25, 2012.

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15. [15-22737](#)-C-13 ANGELA SEIBERT  
DPC-1 Dale Orthner

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
5-13-15 [[20](#)]

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**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 May 13, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----  
-----.

**The court's decision is to overrule the objection and confirm the Plan.**

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

1. The Plan relies on a motion to value collateral being filed for Santander. As of May 13, 2015, Debtor has failed to file such motion.

#### **Debtor's Reply**

The Debtor has recently filed a motion to value set for hearing on June 30, 2015. Debtor requests the court to continue this confirmation hearing to that date, so that the motion to value matter can be resolved.

#### **Discussion**

Debtor filed a motion to value (Dckt. 29), which the court has granted. Seeing that the Trustee's only objection to confirmation is resolved, the court will overrule the objection and confirm the 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.

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 the Objection is overruled, Debtor's Chapter 13 Plan filed on April 3, 2015 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.

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16. [15-22737](#)-C-13 ANGELA SEIBERT  
BF-1 Dale Orthner

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
JPMORGAN CHASE BANK, N.A.  
4-20-15 [[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 April 20, 2015. 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 hearing on the Objection to June 30, 2015 at 2:00 p.m.**

#### **Creditor's Objection**

JPMorgan Chase Bank, N.A. ("Creditor") is the holder of a claim secured by the Debtor's primary residence. Creditor opposes confirmation of the Plan on the basis that the Plan understates the pre-petition arrearage owed to Creditor.

#### **Debtor's Reply**

Creditor seems to only contend that the pre-petition arrearages are \$7,731.78, rather than the \$4,112.46 listed in Debtor's plan. Debtor reports she made at least one recent payment of \$2,056.23 directly to Debtor's Reply Creditor. If so, this may offset the arrearages owed.

Even with the full arrearages of \$7,731.78, there should be enough paid in to Debtor's plan, over the life of the plan, to pay back this amount in full, in addition to all other requirements of the plan. If the plan needs only a technical modification, Debtor requests this be handled with the order confirming the plan.

Further, as of today, May 26, 2015, Chase has yet to file a claim in this case.

### **Debtor's Second Reply**

In her reply to the Chapter 13 Trustee's objection to confirmation, Debtor stated that counsel for Creditor and Debtor's attorney seem to be in agreement to resolve the arrearage amounts in the Order Confirming Plan. (Dckt. 36)

### **Discussion**

Pursuant to 11 U.S.C. 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a home lender holding a mortgage on a debtor's principal residence. By understating the pre-petition arrearage owed to Creditor, the Plan violates 11 U.S.C. 1322(b)(2)'s anti-modification provision.

Given that Debtor and Creditor have indicated willingness to resolve the arrearage discrepancy in the order confirming the plan, the court will sustain the objection and confirm the 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.

The Objection to the Chapter 13 Plan filed by the JPMorgan Chase Bank, N.A. 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 overruled, Debtor's Chapter 13 Plan filed on April 3, 2015 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.

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17. [14-30438](#)-C-13 ROBERT CLAYCAMP  
RRC-3 Pro Se

MOTION TO VACATE AND/OR MOTION  
TO VACATE DISMISSAL OF CASE

DEBTOR DISMISSED: 05/11/2015

**Tentative Ruling:** The Motion to Reopen this Bankruptcy Case 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 the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. 14 days' notice is required.

The Motion to Reopen this Bankruptcy Case 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. At the hearing -----.

**The Motion to Reopen this Bankruptcy Case denied.**

The Debtor ("Movant") seeks to vacate the following orders: (1) May 8, 2015 Order Denying Motion to Vacate to Value Collateral; (2) May 11, 2015 Order Denying Motion to Confirm Plan; and (3) May 11, 2015 Order Dismissing Case. Movant asserts the following grounds as the basis for vacating the orders: Movant was unaware that his attendance at the hearing on these matters was required.

**Trustee's Opposition**

**Discussion**

The motion is denied, and the case is not reopened.

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 Reopen the Bankruptcy Case filed by the Chapter 13 Debtor ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\*\*\*\*

Also #19

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**Tentative Ruling:** The Motion to Confirm the 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). 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 May 11, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 Modified Plan.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor is \$109 delinquent in plan payments to the Trustee to date. Debtor has paid \$19,666 into the plan to date.
2. The amended Schedule J (Dckt. 64) reflects an amount of \$298 that is marked for an "Installment or lease payment: Car payments for Vehicle 1." The proposed modified plan does not list a Class 4 creditor for a vehicle payment.

The modified 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 Modified 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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**Tentative Ruling:** The Motion to Incur Debt 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.**

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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, respondent creditor, and Office of the United States Trustee on May 11, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The motion seeks permission to purchase a used 2011 Mazda CX7 with 97,642 miles, which the total purchase price is \$21,982, with monthly payments of \$298.37 and an interest rate of 15.54%. Debtor provides that such a purchase is necessary as she will be surrendering her current vehicle, a 2004 Trailblazer, because such vehicle required reparations for electrical problems and pistons.

**TRUSTEE'S RESPONSE**

Chapter 13 Trustee responds to draw the court's attention to the fact that Debtor may be currently in possession of the 2011 Mazda CX7, and that pursuant to the Loan Contract attached as Exhibit A, Dckt. 74, the contract was executed in November 2014. Based on the contract, six payments have already come due by the date of the hearing with one more due approximately four days after the date of the hearing.

**DISCUSSION**

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).

The court is not convinced that such purchase is in the best interest of the Debtor. The Debtor does not address the reasonableness of incurring debt to purchase a used vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 2004 Trailblazer, which required repairs. Rather than repairing the vehicle, or purchasing a more affordable vehicle, the Debtor seeks to finance in excess of \$20,000 to purchase a \$21,982 vehicle.

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 15.54%. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase a car when paying holders of unsecured claims a 1% dividend. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a car and attempt to borrow money at an almost 16% interest rate.

Most troubling, however, is the fact that Debtor completed the purchase of the vehicle on November 20, 2014, Dckt. 74, Exhibit A, only six days after filing the bankruptcy petition. The court further notes that the plan proposed on May 11, 2015, set for confirmation hearing today, fails to accommodate the monthly \$298 vehicle payments in Class 4 of the Plan. The Debtor was not authorized to make such a purchase, and electing to do so calls into question whether the proposed Plan in this case is properly confirmable, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

The motion is denied.

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

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

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied and Tanya M. Barnard, Debtor, is not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 74.

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**Tentative Ruling:** The Motion to Incur Debt 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).**

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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, all creditors, and Office of the United States Trustee on June 5, 2015. Fourteen 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). 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. At the hearing -----.

**The Motion to Incur Debt is granted.**

The motion seeks permission to purchase a 2015 Dodge Charger, which the total purchase price is \$33,485, with monthly payments of \$665.89 with an interest rate of 11.56%. Debtor will be trading in her current vehicle, a 2005 Ford, which will be the down payment of \$4,000 Debtor has completed all payments on her chapter 13 plan and awaiting discharge, and asserts that there will be no impact on any creditor with the purchase of the vehicle.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to Incur Debt filed by 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 Kristina Leeann Heyd, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 49.

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 18, 2015. 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 May 18, 2015 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.

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22. [12-23955](#)-C-13 BRENDA STOKES  
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF  
UNION BANK REAL ESTATE M-723  
5-21-15 [[50](#)]

Also #23

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 21, 2015. Twenty-eight days' notice is required. This requirement was met.

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 Union Bank Real Estate M-723, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1460 Corcoran Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$195,000 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 first deed of trust secures a loan with a balance of approximately \$300,573. Union Bank Real Estate M-723's second deed of trust secures a loan with a balance of approximately \$77,881.58. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) 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 Union Bank Real Estate M-723's secured by a second deed of trust recorded against the real property commonly known as 1460 Corcoran Street, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$195,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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23. [12-23955](#)-C-13 BRENDA STOKES  
SDB-4 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF  
UNION BANK, N.A.  
5-21-15 [[55](#)]

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 21, 2015. Twenty-eight days' notice is required. This requirement was met.

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 Union Bank, N.A., "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1460 Corcoran Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$195,000 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 first deed of trust secures a loan with a balance of approximately \$300,573. The second deed of trust secures a loan with a balance of approximately \$77,881.58. Union Bank, N.A.'s third deed of trust secures a loan with a balance of approximately \$21,924.17. Therefore, the respondent creditor's claim secured by a third deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) 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 Union Bank, N.A. secured by a third deed of trust recorded against the real property commonly known as 1460 Corcoran Street, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$195,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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24. [14-29160](#)-C-13 RICHARD ANDERSON  
DBJ-1 Douglas Jacobs

OBJECTION TO CLAIM OF MELISSA  
D. ERICSSON, CLAIM NUMBER 4-1  
5-14-15 [[63](#)]

**Final Ruling: No appearance at the June 30, 2015 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor,, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 14, 2015. 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). This requirement was 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 4-1 of Melissa D. Ericsson is sustained and the claim is disallowed in its entirety.**

Richard Anderson, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Melissa D. Ericsson ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$87,029. Objector asserts that pursuant to 11 U.S.C. § 1328, this debt is dischargeable in a chapter 13 bankruptcy, and as such Proof of Claim No. 4-1 should be unsecured.

#### **CREDITOR'S RESPONSE**

Creditor responds to Debtor's objection, agreeing that the claim should be treated as unsecured. Creditor further provides that on June 15, 2015, Debtor amended Proof of Claim No. 4-1 by filing Proof of Claim No. 4-2.

#### **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim.

*Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The court has perused the court docket and notes that on June 15, 2015, Creditor did indeed file Proof of Claim No. 4-2, amending Proof of Claim No. 4-1, and changing and classifying the entire amount of \$87,029 to unsecured debt.

Based on the evidence before the court, the creditor's claim 4-1 is disallowed in its entirety. The Objection to the Proof of Claim 4-1 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 Melissa Ericsson, Creditor filed in this case by Debtor Richard Anderson, 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, noting Creditor's filing of Proof of Claim No. 4-2 amending Proof of Claim No. 4-1, the objection to Proof of Claim Number 4-1 of Creditor Melissa Ericsson is sustained and the claim is disallowed in its entirety.

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**Tentative Ruling:** The Motion to Extend 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).**

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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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. 14 days' notice is required. This 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. At the hearing -----.

**The Motion to Extend the Automatic Stay is granted.**

Brandy Marie Wobschall ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28934) was dismissed on February 11, 2015, after Debtor failed to make plan payments. See Order, Bankr. E.D. Cal. No. 14-28934, Dckt. 29, February 11, 2015. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at §

362(c)(3)(C)(i)(II)(cc). 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(c) and 1325(a) – but the two basic issues to determine good faith under § 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, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor provides that Debtor was unable to complete plan payments in the previous bankruptcy filings due to unexpected financial hardships. Debtor's prior chapter 13 plan relied heavily on the support of family contributions of \$2,500 per month. Debtor's family was unable to provide support, however, Debtor provides that she is now employed full time with Harmony Homecare as of April 2015. With the consistent income, Debtor is confident she will be able to support a new chapter 13 plan. Debtor has filed the current bankruptcy case in order to save her family home.

The 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 and parties, unless terminated by operation of law or 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 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 and parties, unless terminated by operation of law or further order of this court.

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**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.**

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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 May 15, 2015. 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 grant the Motion to Confirm the Plan.**

Chapter 13 Trustee opposes confirmation of the proposed plan on the basis that Debtors cannot afford to make plan payments to comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' first amended plan appears to proposed plan payments of \$1,934 for 3 months and then starting August 2015 the payments increase to \$2,855.09 per month, and increase of \$921.09.

On May 15, 2015, Debtors amended their schedules I and J, Dckt. 29. Amended Schedule I increased the net income for Debtor 1 from \$3,548.62 to \$3,968.58. However the continuation sheet for schedule I no longer lists the 401k/TSR payroll deduction in the amount of \$419.96. The amended schedule I also reduced the monthly contributions from a household member from \$220 to \$133.50 per month.

Debtors' amended schedule J now reflects a monthly net income of \$1,934.06 per month. Trustee notes that Debtors added \$156.25 for Childcare/education costs and increased personal care products/services by \$50. Debtors' declaration supporting the motion is silent as to the changes made to the amended schedules. It states that the plan payments will increase due to the increase of the regular mortgage and escrow payments. It is not clear how the Debtors will be able to increase their plan payments by \$921.09.

On May 15, 2015, Debtors filed an amended declaration of Eduardo Z. Marcelo, Jr., Debtors' nephew who resides with Debtors, Dckt. 33, which now states in part that Mr. Marcelo will provide financial assistance to Debtors of \$133.50, but that he would increase or decrease monthly assistance according to need. However it is not clear to Trustee why Debtor's nephew reduced his contribution by \$86.50 per month. Thus it appears Debtors cannot afford plan payments under 11 U.S.C. § 1325(a)(6).

#### **DEBTORS' S RESPONSE**

Debtors respond to Trustee's opposition, explaining that:

1. Debtors' amended schedule I shows an increase in monthly disposable income because Debtor is not longer going to contribute to his 401k retirement plan. This retirement contribution is voluntary and should be included in his monthly income. Debtors' amended schedule I also shows a reduced monthly contribution from the Debtors' nephew monthly disposable income. Because Debtors are increasing their disposable income, Debtors' nephew has decreased his monthly contribution to \$133.50.
2. Debtors' amended schedule J shows an expense of \$156.25 for education costs of Debtors' minor child, which was inadvertently omitted from Debtors' expenses in the original schedule J. The increase in personal care products/services of \$50 was inadvertently added and is being corrected by the filing of a second amended schedule J.
3. Debtors' amended schedule I shows a reduced monthly contribution from the Debtors' nephew monthly disposable income. Because Debtors are increasing their disposable income, Debtors' nephew has decreased his monthly contribution to \$133.50.
4. Debtors make a correction by second amended schedule J, as seen in Exhibit B, Dckt. 45. Debtors have also submitted a second amended schedule I, Exhibit C, Dckt. 45, showing the increase in Debtors' disposable income by \$50 but further decreasing the household member's contribution accordingly to \$83.50 until August 2015. Debtors also explain various changes in income with increase mortgage and escrow payments, disposable income created by ceasing to pay retirement contributions, etc.

The court is satisfied that Debtors have sufficiently rebutted Trustee's objections and explained the changes in Debtors' amended schedules with the second amended schedules. 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 May 15, 2015 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.

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**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).**  
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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 May 28, 2015. Fourteen days' notice is required. This requirement was 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. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. The proposed plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1).
  - a. Debtor's plan calls for payments of \$363 for sixty months. However, the plan indicates an arrearage dividend of \$330 and total mortgage arrears of \$18,180. The proposed plan payments are not sufficient to account for \$330 monthly contract installments and \$330 arrearage. Moreover, the Notice of Mortgage Payment Change filed by the creditor indicates a monthly mortgage payment of \$1,881.61.
  - b. Section 2.15 lists total unsecured debts as \$0, however Debtor's schedule F lists unsecured debts totaling \$2,900

and one debt as "Unknown" raising the possibility that Debtor is not eligible for relief under 11 U.S.C. § 109(e).

2. The proposed plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total \$37,349.65 and Debtor proposes to pay 0% to unsecured creditors. Debtor's schedules A, B, and C indicate non-exempt equity of \$37,349.65 in real property located at 3521 Sierra College Boulevard, Loomis, California.
3. Debtor may not be able to make plan payments, 11 U.S.C. § 1325(a)(6).
  - a. Debtor has not provided Trustee with Business Documents.
  - b. Debtor's schedule I lists monthly net business income of \$4,050. The form requires an attachment listing the gross business income and all expenses. Debtor has not filed the required attachment as called for by the form, without which Trustee cannot determine what Debtor's business income is, or if the expenses are reasonable and necessary.
  - c. Section 2.07 lists \$33 per month for administrative fees, however section 2.07 indicates fees have been paid in full, and Debtor has not estimated what amount of additional fees are expected.
  - d. Section 2.09 and 2.11 list the same Creditor Seterus. This is contradictory treatment unless Debtor has more than one mortgage as Class 1 "includes all delinquent secured claims that mature after completion of this plan" where Class 4 claims" are not in default."
4. The proposed plan is not Debtor's best efforts, 11 U.S.C. § 1325(b).

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

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

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

The Objection to the Chapter 13 Plan filed by 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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**Tentative Ruling:** The Motion to Confirm the 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). 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.**

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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 May 15, 2015. Thirty-five 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 Modified Plan.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that it appears that Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent in \$470 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$39,140 have become due. The Debtor has paid a total of \$38,670 to Trustee with the last payment on March 25, 2015 of \$3,000.

The modified 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 Modified 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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**Tentative Ruling:** The Motion to Incur Debt 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).**  
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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, all creditors, and Office of the United States Trustee on June 16, 2015. Fourteen 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). 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. At the hearing -----.

**The Motion to Incur Debt is granted.**

The motion, filed by Debtor and Debtor's non-filing spouse, seeks permission to finance the repair of the roof the single family house, 2205 Sandcastle Way, Sacramento, California, which is owned by non-filing spouse as her "sole and separate property." Non-filing spouse seeks permission to employ The Home Depot, with total financing of \$15,000 at an interest rate of 7.99% for 84 months at \$233.72 per month. Exhibit B, Dckt. 23. Movant asserts that the approved financed amount is enough to cover the cost of replacing the roof, which is \$12,568. The Debtor's chapter 13 plan payments will remain unaffected at the approved \$700 per month. Non-filing spouse states that she will pay for the proposed Home Depot monthly payments be reducing monthly recreational expenses by \$100 and by using \$133.72 of the allotted \$150 per month budgeted for Home Maintenance in the original schedule J.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to Incur Debt filed by 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 Dean Sanchez Mora and Adrian Mora, Debtor and Debtor's non-filing spouse, are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 23.

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**Tentative Ruling:** The Motion to Amend 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 15, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value 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. At the hearing -----  
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**The Motion to Amend is denied.**

Movant-Creditor Kennedy Meadows MHC, LLC dba Fairway Estates ("Creditor") moves the court for an order amending the court's order denying Creditor's Motion for Relief from Automatic Stay ("Order Denying"), Dckt. 50. In the court's Order Denying, the court stated that Creditor "may file a motion to amend the order to grant relief from the automatic stay, rather than filing a new motion, *if Movant believes that Debtor is not actively performing the confirmed plan and working in good faith to sell the mobile home which is located on the Property.*" Order Denying, April 20, 2015. Dckt. 50 (emphasis added).

Creditor here asserts that the an amended order is warranted on four grounds.

(1.) Debtors is delinquent in rent.

(2.) Debtors have failed to twice make timely make plan payments.

(3.) Debtors have failed to honor a right of first refusal.

(4.) Other good cause appearing.

Based on these four grounds, Creditor asserts that Debtors have, first, failed to adhere to their Chapter 13 plan, and second, failed to sell the mobile home in good faith.

#### **TRUSTEE'S OBJECTION**

Chapter 13 Trustee has filed an objection to Creditor's Motion to Amend. Providing that:

(1.) Although Creditor has provided a rent check dated April 2, 2015 which appears to be an insufficient funds check, and provided a declaration that alleges Debtors' post-petition delinquency, the provided declaration has not provided sufficient factual detail for the court to find a post-petition delinquency.

(2.) Debtor is current in plan payments.

(3.) The court granted Debtors' Motion to Sell on June 16, 2015, free and clear of liens of Creditor.

Finally, Trustee states that the court has previously consider the motion for stay relief, and Trustee is not certain cause exists to reconsider.

#### **DISCUSSION**

The court is in agreement with Chapter 13 Trustee, and does not find that Creditor has sufficiently raised new bases to raise cause to stay relief. In fact, Creditor has here merely reasserted the grounds upon which the very motion

First, Creditors raise that Debtors are delinquent in post-petition rent payments to Creditor. As evidence of this post-petition delinquency, Creditors provide a check returned for insufficient funds, dated April 2, 2015, and the Declaration of Wilfredo Motta authenticating the returned check. The court notes, however, that the court issued the Order Denying the Creditor's Motion for Relief from Automatic Stay on April 20, 2015, Dckt. 50, wherein the court recommended that if Creditor believed Debtor to not be actively performing the confirmed plan, Creditor had a basis to move to amend. Creditor here has submitted a check that was written and returned to Creditor before the court even issued its April 20, 2015 order. As Trustee notes, this is not sufficient evidence that Debtors are delinquent in rent payments.

Second, Chapter 13 Trustee provides that Debtors are current on plan payments, contrary to assertions of the Creditor. This is also evidenced in the court docket. Dckt. 98.

Third, the court understands the Debtors are actively pursuing a sale of their mobile home, as evidenced by the Debtors' Motion to Sell, which the court granted at hearing on July 16, 2015. Dckt. 94. Further, the court notes that Creditors raised the "right of first refusal" argument at such hearing, which the court rejected. Dckt. 92.

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 Amend filed by Debtor(s) 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 Amend is denied.

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31. [15-23185](#)-C-13 AMANDA SHRINER  
DPC-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
5-28-15 [[37](#)]

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation is overruled as moot, and the matter is removed from the calendar.**

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**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).**

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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 May 28, 2015. Fourteen days' notice is required. This requirement was 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. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

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

1. Debtor's schedule D lists a leased vehicle. Section 3 of the plan does not indicate Debtor has assumed that least.
2. Debtor's plan may not be in Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income according to the Statement of Current Monthly Income.
3. Debtor is \$210 delinquent in plan payments to Trustee to date and the next scheduled payment of \$210 is due in June 25, 2015. Debtor 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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33. [15-23689](#)-C-13 STEVEN SANDOVAL OBJECTION TO DISCHARGE BY DAVID  
DPC-1 C. Anthony Hughes P. CUSICK  
5-28-15 [[18](#)]

**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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, Debtor's Attorney, and Office of the United States Trustee on May 28, 2015. 28 days' notice is required. This requirement was met.

The Objection to 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 court's decision is to sustain the Objection.**

David Cusick, the Chapter 13 Trustee, objects to Debtor's discharge on the basis that Steven Sandoval ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on April 11, 2013, Case No. 13-24965. The Debtor received a discharge on July 29, 2013, Case No. 13-24965, Dckt. 14.

The instant case was filed under Chapter 13 on April 23, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on July 29, 2013, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-23689), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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 Discharge 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 to Discharge is sustained.

**IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-23689, the case shall be closed without the entry of a discharge.

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**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.**

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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 May 12, 2015. 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.**

Chapter 13 Trustee opposes confirmation of the proposed plan on the basis that Debtor's schedule J does not match the plan, and as such, Debtor's plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). The monthly net income listed on Schedule J is \$341.09. Furthermore, Debtor's schedule I states her 401k loan will be paid off in September 2017. Debtor has not increased her plan payments once the debt is paid. Debtor's amended plan calls for 36 payments of \$147.90 per month. Debtor appears to be below median based on Form 22c.

The Plan complies 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.

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**Final Ruling:** No appearance at the June 30, 2015 hearing is required.  
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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 May 6, 2015. 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 May 6, 2015 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.

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