UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 7.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–6, attempting to first address the items in which short oral argument is anticipated.

December 19, 2017, at 3:00 p.m.

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1. **17-25018-E-13** **ALFREDO/IVY ARRAZOLA** **MOTION TO CONFIRM PLAN**
GEL-1 **Gabriel Liberman** **11-6-17 [20]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 6, 2017. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is granted.

Alfredo Arrazola and Ivy Arrazola ("Debtor") seek confirmation of the Amended Plan because they needed to disclose a part-time temporary job and because their son had moved out and now longer influenced their budget. Dckt. 22. The Amended Plan proposes plan payments of $150.00 for three months, followed by $250.00 for the remaining months, providing an 8.7% dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 29, 2017. Dckt. 26. The Chapter 13 Trustee asserts that Debtor is $100.00 delinquent in plan payments, which represents less than one month of the $250.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Section 1.03 of the Amended Plan states that the term is thirty-six months, but Section 6, the Motion, and the Declaration discuss a sixty-month plan. The Chapter 13 Trustee is unsure what the correct term is supposed to be and requests that Debtor clarify the term.

DEBTOR'S RESPONSE

Debtor filed a Response on December 4, 2017. Dckt. 29. Debtor states that the $100.00 delinquency was cured on November 30, 2017.

Debtor clarifies that the plan term is supposed to be for thirty-six months and requests that an amendment to the plan term be made in the order confirming.

RULING

Debtor appears to have cured the delinquency, only leaving the question of what the applicable plan term is supposed to be. Debtor argues that the Plan should read that its term is thirty-six months. A review of the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period shows that Debtor is below median income and that the applicable plan period is for three years. That document and Debtor's assertion that the Plan should be for thirty-six months clarifies the ambiguity that the Chapter 13 Trustee pointed out.

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 6, 2017, and as amended to have Section 6.01 reference a plan term of thirty-six months, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. **16-24337-E-13** **QUAY SAMONS** **MOTION TO MODIFY PLAN**
NBC-3 **Eamonn Foster** **11-6-17 [82]**

APPEARANCE OF EAMONN FOSTER, COUNSEL FOR DEBTOR REQUIRED FOR DECEMBER 19, 2017

TELEPHONIC APPEARANCE PERMITTED

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors who filed a claim, and Office of the United States Trustee on November 6, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice to all creditors); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). All creditors listed on the Master Address List have not been served. *See* Dckt. 3.

The Motion to Confirm the Modified Plan has not been set properly for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied without prejudice.

Quay Samons ("Debtor") seeks confirmation of the Modified Plan because his daughter has agreed to help pay arrearages. Dckt. 85. The Modified Plan proposes that $19,900.00 be paid into the Plan through October 6, 2017; that plan payments be $1,700.00 for the remainder of the Plan; that Tianna Mason ("Debtor's Daughter") contribute $500.00 monthly to fund the Plan; that unsecured claims receive a 0.00% dividend, and that 0.00% be paid to any remaining attorney's fees. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Debtor's Daughter has a filed a declaration in which she states that she is willing to pay $500.00 per month for the next five months to help Debtor catch up on plan payments. Dckt. 86.

INSUFFICIENT SERVICE OF MOTION

The Proof of Service filed with this Motion indicates that only three creditors were served: St. Elizabeth Hospital, Systems & Services Technologies, and The Bank of New York Mellon c/o Ditech Financial LLC. Dckt. 87. Those three creditors are the only ones to file claims in this case. *See* Proofs of Claim No. 1-1, 2-1, & 3-2.

Federal Rule of Bankruptcy Procedure 3015(g) requires that a proposed modification be served on all creditors in a case, not just the ones who file claims. The Master Address List filed by Debtor on July 1, 2016, indicates that there are creditors to be served at seventeen locations (with some of those creditors repeating in name at differing addresses). Dckt. 3. Those creditors have not all been served with notice of this Motion or of the Modified Plan.

The service provided for the Motion is insufficient. Accordingly, the Motion is denied without prejudice.

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 Quay Samons ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SERVICE TO ALL CREDITORS

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 5, 2017. Dckt. 101. The Chapter 13 Trustee asserts that Debtor is $200.00 delinquent in plan payments under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Class 1 fails to list a monthly dividend, which are not addressed in the additional provisions.

The Chapter 13 Trustee also argues that the Motion does not comply with Federal Rule of Bankruptcy Procedure 9013 by not pleading with particularity grounds such as

> a description of any additional provision of the plan that differ[s] from the form plan; whether the filing fees have been paid and the total of plan payments to date; the goal of the plan, (such as payment toward a house, car, or taxes); the amount of non-exempt equity, if any; the nature and history of debtor's income; what happened to the debtor prior to filing that led to the bankruptcy; whether the debtor owes a domestic support obligation and if it is current post-petition; and whether the debtor has filed all tax returns for the last four years, (11 U.S.C. § 1325(a)(1)–(9)).

DEBTOR'S RESPONSE

Debtor filed a Response on December 12, 2017. Dckt. 107. Debtor states that $200.00 has been mailed to the Chapter 13 Trustee to cure the delinquency.

Debtor states that Additional Provision 6.02 for the Modified Plan was supposed to read:

> The monthly arrearage dividend on the Class 1 claim shall be $390.98 for the remainder of the plan. During the 5 months while the debtor and his daughter are making additional payments into the plan to cure the post-petition arrears, trustee is to distribute the additional funds to the Class 1 secured creditor.

Debtor requests that the above-additional language be included in an order confirming.

As for pleading with particularity, Debtor attacks the Chapter 13 Trustee's assertion that the Motion has not satisfied Federal Rule of Bankruptcy Procedure 9013. Debtor argues that the Motion clearly sets forth that the Modified Plan has been proposed to cure Debtor's plan payment delinquency, which Debtor attempts to cure with assistance from his daughter. Debtor disagrees with the Chapter 13 Trustee's citation to *Ashcroft v. Iqbal* for any contention about pleading standards for this Motion, and he requests that the court find that this Motion satisfies the pleading standard.

RULING

At the hearing, the Chapter 13 Trustee reported that Debtor has cured the delinquency and that the proposed additional provision is acceptable / unacceptable.

As for the contention that the Motion has been pleaded with particularity, Debtor is incorrect.

Review of Pleading Requirements for a Motion

Federal Rule of Bankruptcy Procedure 9013 (emphasis added) requires:

> "A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. **The motion shall state with particularity the grounds therefor**, and shall set forth the relief or order sought."

This uses the same language as in Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 for motions in adversary proceedings.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Debtor's Motion states with particularity the following grounds upon which the requested relief (confirmation of a plan in compliance with 11 U.S.C. §§ 1322 and 1325) is based:

1. "Debtor, Quay Louis Samons, by and through Eamonn Foster, his attorney of record, moves the Court to confirm the debtor's First Modified Chapter 13 Plan. This motion is made on the grounds that:

2. The Plan is proposed in good faith.

3. The Plan complies with 11 U.S.C. §§ 1322 and 1329. This plan is in the best interest of both the debtors and the creditors, and is the debtor's best efforts.

4. This Plan is supported by the accompanying Declaration of the Debtor, and Declaration of Debtor's Daughter."

Motion, Dckt. 82 at 1. The factual allegation or Debtor's legal conclusion that: (1) the Plan is proposed in good faith, (2) that the Plan complies with 11 U.S.C. §§ 1322 and 1329, and (3) that the Plan is supported by declarations does not state grounds to confirm a plan under 11 U.S.C. § 1325. Rather, it merely consists of Debtor dictating to the court Debtor's ultimate legal conclusion that, in Debtor's opinion, the Plan complies with the law, no actual grounds being asserted for the court to make any determinations.

The defect in Debtor's contentions is shown in the Reply, in which Debtor argues that the court can just read all of the pleadings in the file and determine what should be the grounds that Debtor should plead if Debtor were to comply with Federal Rule of Bankruptcy Procedure 9013. Debtor states that the "moving papers," whatever they may be, state with particularity, inferring that the court should provide associate legal services for Debtor's counsel and create a motion for Debtor.

The reply goes further to "admit" that the Motion does not state the required grounds, but that "for the other aspects of 11 U.S.C. § 1325(a)(1)–(9), those are addressed in Debtor's declaration, which is referenced in the motion." Declaration, p. 3:1–2; Dckt. 107.

To the extent that Debtor contends that it is so "simple" for the court to mine the various other supporting pleadings and the other documents in this case, it is even easier for Debtor and Debtor's counsel to comply with Federal Rule of Bankruptcy Procedure 9013.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Debtor believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents, a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* LOCAL BANKR. R. 9014-(d)(4). The court has not waived that Local Rule for Debtor.

The Motion is denied, and the proposed Modified Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Quay Samons ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied.

3. **17-26752-E-13** **ROXANNE PRIDE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
11-17-17 [19]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on November 17, 2017. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Roxanne Pride's ("Debtor") exceeds sixty months;

B. Debtor has unreported income and expenses; and

C. Debtor has not provided tax returns and pay advices.

The Chapter 13 Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in eighty-three months due to providing a 10% dividend to general unsecured claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

At the Meeting of Creditors, Debtor stated that she has additional income from a second job, but that job is not disclosed on Schedule I. There appears to be additional disposable income with which to fund the Plan.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule J lists $0.00 for education costs, $25.00 for medical and dental care, $0.00 for entertainment, and $0.00 for taxes, among other listings. Those illustrate how difficult of a time Debtor will have living within her questionable budget. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

4. **17-26590-E-13** **RICHARD HUETTNER** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Matthew DeCaminada** **11-14-17 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled.

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Richard Huettner ("Debtor") appeared at the first Meeting of Creditors, but he did not present verification of his Social Security number, and he was not sworn in or examined.

The Chapter 13 Trustee requests that the Objection be continued to 3:00 p.m. on December 19, 2017, which is after the continued Meeting of Creditors that is scheduled for 11:00 a.m. on December 14, 2017.

DECEMBER 12, 2017 HEARING

At the hearing, the court granted the Chapter 13 Trustee's request for a continuance and continued this matter to 3:00 p.m. on December 19, 2017. Dckt. 21.

RULING

Appearance at the Meeting of Creditors is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

A review of the Chapter 13 Trustee's report from the continued Meeting indicates that Debtor appeared and was examined. December 15, 2017 Docket Entry Report. The Chapter 13 Trustee's Objection has been resolved; the Objection is overruled; and the Chapter 13 Plan filed on October 16, 2017, 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 Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Richard Huettner's ("Debtor") Chapter 13 Plan filed on October 16, 2017, is confirmed. Counsel for 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.

5. 17-25834-E-13 BRANDON HEATON MOTION TO CONFIRM PLAN
GEL-1 Gabriel Liberman 11-3-17 [22]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Brandon Heaton ("Debtor") seeks confirmation of the Amended Plan because he has decided to surrender his home and move into a rental property. Dckt. 24. The Amended Plan reclassifies the debt owed to Bank of America, N.A. secured by real property commonly known as 9943 Prairie Dune Way, Sacramento, California, from Class 1 to Class 3. The Amended Plan also increases Class 2A for Ford Motor Credit from $401.29 to $424.38. Finally, the Plan increases the Internal Revenue Service's ("IRS") priority claim by $7,409.18. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 9, 2017. Dckt. 28. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in sixty-nine months due to the IRS's claim being filed higher than provided for by Debtor. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The IRS asserts a claim of $59,654.41 in this case. Even though the Amended Plan provides for the priority portion of that claim ($39,087.37), it does not provide for the secured portion ($20,567.04).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the IRS's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to deny confirmation.

"Best Efforts" Opposition

As additional opposition to the present Motion, the Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date

> of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a one percent dividend to unsecured claims, even though Debtor is anticipating paying $2,500.00 per month in rent for a three- or four-bedroom house (which would also require paying $5,000.00 total as a security deposit for first- and last-month's rent).

A review of Schedule J shows that Debtor's family unit consists of four persons (Debtor and three daughters). Dckt. 1 at 28. However, Debtor also states that he is married. Statement of Financial Affairs Part 1, Question 1; *Id.* at 31. It appears that there is another member of this family unit. On Schedule I, Debtor does not provide information as to the non-debtor spouse's income, instead entering on each line for the required information "NA," presumably meaning "not applicable."

The income information of a non-debtor spouse is "applicable" and must be disclosed on Schedule I. If it is $0.00, then such must be disclosed on Schedule I. At the hearing, counsel for the Debtor explained **xxxxxxxxxxxxxxxxxxxxxxx**.

The Amended Plan provides for $0.00-per-month payments for months 1 through 3, and then $1,203.00 for months 4 through 60. Debtor will no longer attempt to cure and continue to make a Class 1 payment to Bank of America.

Exhibit A is the Debtor's new, post-petition, expense budget. Dckt. 25. Debtor's monthly expenses are stated to be $6,000.75 per month, yielding the $1,210.00 in Monthly Net Income, which is proposed to fund the Plan. The expenses asserted by Debtor to be reasonable include:

A. Home Maintenance.....$200.00 (for a rental property)

B. Transportation (not including insurance).....$900.00 (for one vehicle)

C. Auto Insurance.....$125.00 (for one 2013 vehicle)

Debtor's original Plan required $4,260.00 per month, which included the current mortgage payment and cure payment totaling $3,027.26. Dckt. 5. For the first three months of the Plan, the $4,260.00 payment has not been paid, which indicates that Debtor has $12,780.00 that has not been accounted for in the Amended Plan now before the court.

Debtor states that with confirmation of this Plan the secured claim of Bank of America, N.A., will be treated as a Class 3 surrender, necessitating no payment from Debtor. Until the Class 1 creditor forecloses on Debtor's current residence, Debtor will live with no rent or mortgage payment. Assuming that it takes at least three months for the creditor to foreclose, there is an additional $7,500.00 of "expense" that will not actually be paid. When added to the three months of Monthly Net Income not paid, there is $20,280.00 of monies not accounted for by Debtor.

Additionally, Debtor purports to have $200.00 per month for a rental property. While $200.00 may not be unreasonable "repair" and "maintenance" expenses for a home owned by a debtor, $2,400 per year is not reasonable for a rental. For sixty months of a plan, that is an additional $12,000.00 of projected disposable income that is not accounted for by Debtor in this Plan.

These unaccounted for monies total $32,280.00 over the life of the Plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Quay Samons ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6. **17-25945-E-13** **HARRY NASH** **MOTION TO CONSOLIDATE LEAD CASE 2017-25945 WITH 2017-25972**
PGM-3 **Peter Macaluso** **12-1-17 [50]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2017. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion for Joint Administration and Substantive Consolidation is granted.

Harry Nash ("Debtor") and Josephine Nash (debtor in Case No. 17-25972) (collectively, "Movant") move for the court to jointly administer their separate cases pursuant to Federal Rule of Bankruptcy Procedure 1015(b) and to substantively consolidate their separate cases into one case pursuant to 11 U.S.C. § 105(a).

Movant argues that they are married and have property in common. Additionally, Movant argues that the assets in the two cases are the same, save for real property that is held by each debtor individually. Movant claims that the same unsecured claims are in each case and that the assets and liabilities, financial statements, physical location of assets, community property assets and liabilities, and income and expenses are easy to ascertain.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on December 6, 2017. Dckt. 57. The Chapter 13 Trustee does not oppose the Motion and states that Debtor Harry Nash is current on plan payments in this case.

DISCUSSION

Debtor's Motion is built on the foundation of 11 U.S.C. §§ 105(a), 302(b) and 1123(a)(5)(c), and Federal Rule of Bankruptcy Procedure 1015(b). Dckt. 50 at 2:12–14. With respect to administration of bankruptcy cases filed by spouses,

> "(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.
>
> (b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated."

Even when filed in one petition, spouses in "one" bankruptcy case really constitute two cases and two bankruptcy estates. Rarely does the court no consolidate the two estates and have them administered as one. Here, the two debtors, acting in *pro se*, filed two separate cases.

Federal Rule of Bankruptcy Procedure 1015(b) governs joint administration of cases pending in the same court with two or more related debtors, providing:

> (b) If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife . . . , the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

The notes by the Advisory Committee provide additional insight to how the two subsections apply to cases. The notes state:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. **This rule does not deal with the consolidation of cases involving two or more separate debtors**. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. **Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule** [because] the propriety of

> consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. . . .
>
> **Joint administration as distinguished from consolidation** may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

FED. R. BANKR. P. 1015 (Notes of Advisory Committee) (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)).

Joint administration and substantive consolidation are not the same concept. Joint administration is a procedural tool that aids expediting cases, but "[b]ecause of the dangers in forcing creditors of one debtor to share on a parity with creditors of a less solvent debtor . . . substantive consolidation is no mere instrument of procedural convenience . . . but a measure vitally affecting substantive rights." *Union Savings Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 518 (2d. Cir. 1988); *see also Reider v. F.D.I.C. (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994).

Sometimes, the substantive consolidation of two estates may be appropriate, such as to create a single fund to pay identical claims. *See Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 764 (9th Cir. 2000). Despite that possibility, the Ninth Circuit has not provided much guidance for courts when presented with the scenario. One case from the Bankruptcy Appellate Panel for the Ninth Circuit indicated that relevant factors for substantive consolidation include the breadth of jointly held property and the number of debts owed jointly. *Ageton v. Cervenka (In re Ageton)*, 14 B.R. 833, 835 (B.A.P. 9th Cir. 1981).

Review of Schedules and Plan

Using the Schedules in this case, it appears that there may be some unusual facts that mitigate in favor of the cases being jointly administered.

Debtor and spouse assert an interest in the Panorama Drive Property with a value of $779,000.00. Amended Schedule A, Dckt. 44 at 4. That is listed as property in or from the estate of Margaret Cadilli (Debtor's spouse in the second case), being subjected to a lien securing debt in the amount of ($297,970.58), Amended Schedule D, 45 at 4, showing an equity of almost $500,000.00 for Movant.

Debtor also lists owning property on Grove Circle with a value of $439,000.00, which is subject to a lien securing debt of ($217,215.53), showing an equity of $221,784.47. Amended Schedules A and D, Dckts. 44 & 45. Debtor then lists a third property, Oakwood Avenue with a value of $465,000.00, which is subject to a lien securing a debt of ($418,381.00). *Id.*

In addition, Debtor states on Amended Schedule B having a "Worldmark–Vacation Property" that has a value of only $1.00. Dckt. 44 at 12.

On Amended Schedule I, Debtor states under penalty of perjury that he has income of $5,632.00, which includes $1,080 for "SSI from dependent." *Id.* at 14. That includes only $2,000 per month from wages and $1,747.00 from Social Security (in addition to the SSI income in the prior sentence).

Debtor also lists the Debtor Spouse having monthly income of $9,342.00. *Id.* That includes "rental or business income" of $8,060.00 per month. *Id.* No such "business" is disclosed on Amended Schedule B.

Looking at Debtor's Amended Schedule I and J, though reporting that he and Spouse Debtor have gross income of $17,037.60, which includes income from each of them working two jobs, the total tax payments for income, medicare, Social Security taxes are only $887.00—for the two of them. Dckt. 44 at 14.

RULING

At the October 17, 2017 hearing, the court denied without prejudice Movant's first motion to consolidate these two cases and indicated that the parties could research and present proper grounds to the court for substantively consolidating the two related cases. Movant has responded with this Motion that requests such consolidation under 11 U.S.C. § 105(a). Standing alone, such request is inadequate. But Debtor does reference 11 U.S.C. § 302(b), which provides for the substantive consolidation of the bankruptcy estates of spouses when a joint case is filed.

Collier on Bankruptcy, Sixteenth Edition, ¶ 302.06, states,

> "To consolidate under section 302(b), the debtors must be spouses. In determining whether the estates of the spouses should be consolidated, a court will examine the extent of jointly held property and the amount of jointly owned debts. In cases involving joint petitions, the extent of consolidation will depend largely upon whether either spouse owns substantial non-exempt separate property, or community property that is solely liable for the debts of one spouse. If no separate or restricted community property exists, and the court finds that the affairs of the two spouses are so intermingled that their respective assets and liabilities cannot be separated, the estates may be fully consolidated, and any community property made available in distribution to the creditors of both spouses who hold community claims."

A review of the two sets of Schedules and Statements of Financial Affairs reflect that there is no significant difference between the two estates, with each claiming the same assets and income in each case. If Debtor and spouse had been represented by an attorney, the court is confident that a single joint case would have been filed. It would have been routinely administered as a "joint estate" with no consideration of substantive consolidation.

The Verification of Master Mailing List filed by Josephine Nash (spouse) in her case only lists Ocwen Loan Servicing and the Mortgage Law Firm as parties in interest. 17-25972, Dckt. 4.

Now, with the same counsel representing the two debtors, the Schedules filed in the cases are identical. Dckt. 44; 17-25972, Dckt. 55. Attempting to separately administer the assets and pay the claims would only result in confusion and unnecessary expense not only for Debtor and spouse, but also for creditors.

Movant trumpets the argument that the assets and liabilities are so similar in the two cases (save for separate real property) that they can be jointly administered. The Chapter 13 Trustee agrees and has requested that the Motion be granted, which indicates to the court that he believes the two cases can be jointly administered and consolidated without unfair prejudice to creditors.

The Motion requesting that Case No. 17-25945 and Case No. 17-25972 be administered jointly and consolidated pursuant to Federal Rule of Bankruptcy Procedure 1015(b) and § 302(b) 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 Consolidate Cases filed by Harry Nash and Josephine Nash ("Movant") having been presented to the court, Movant requesting that the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Consolidate Cases is granted, and this bankruptcy case, *In re Harry R. Nash*, Case No. 17-25945, and the bankruptcy case *In re Josephine Nash*, Case No. 17-25972, are ordered to be substantively consolidated and administered jointly.
>
> **IT IS FURTHER ORDERED** that all further pleadings shall be filed in Case No. 17-25945, which shall be prosecuted as a joint bankruptcy case filed by spouses Harry Nash and Josephine Nash.
>
> **IT IS FURTHER ORDERED** that on or before December 31, 2017, joint debtor Harry Nash and joint debtor Josephine Nash shall filed an amended petition, amended schedules, and amended statement of financial affairs as joint debtors.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Court shall amend the name of the Harry R. Nash bankruptcy case to be *Harry R. Nash and Josephine A. Nash*.

ORDER IN JOSEPHINE A. NASH BANKRUPTCY 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 on the Motion to substantively consolidate the Josephine A. Nash bankruptcy case with that of her spouse Harry R. Nash, 17-25945, Dckt. Xxxxxxxxxxx.

The court having ordered that the bankruptcy case of Josephine A. Nash, 17-25972 be substantively consolidated with the pending Chapter 13 case of her spouse, Harry R. Nash, the dismissal of the Josephine A. Nash Case pending, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the bankruptcy case of Josephine A. Nash is the joint case with her spouse Harry R. Nash, 17-25945, and no further pleadings shall be filed in this case.

FINAL RULINGS

7.	**17-20494-E-13 SDB-3**	**THOMAS/COZETTE CRAVENS Scott de Bie**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF DE BIE AND CROZIER, LLP DEBTORS ATTORNEY(S) 11-13-17 [39]**

Final Ruling: No appearance at the December 19, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

W. Scott de Bie, the Attorney ("Applicant") for Thomas Cravens and Cozette Cravens, Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 24, 2017, through December 19, 2017. The order of the court approving employment of Applicant was entered on April 24, 2017. Dckt. 21. Applicant requests fees in the amount of $3,225.00 and costs in the amount of $160.72.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on November 22, 2017. Dckt. 47. He notes that Applicant requests $160.72 in costs but only lists individual costs that amount to $154.13. Additionally, Exhibit B does not state the total costs clearly.

APPLICANT'S REPLY

Applicant filed a Reply on December 4, 2017. Dckt. 50. Applicant agrees with the Chapter 13 Trustee that the pleadings are inconsistent. He argues that there was an additional expense of $6.60 for postage, but he agrees to reduce the requested costs to $154.13 because of the pleading error.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include filing a substitution of attorney, preparing a filing a modified plan, conferring with Client and prior counsel and the Chapter 13 Trustee, and preparing this Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant has not provided a task billing analysis for the services provided, but given the relatively short description of the categories, the court lumps them into one.

General Case Administration: Applicant spent 10.75 hours in this category. Applicant conferred with Client and with Client's prior counsel, prepared and filed a substitution of attorney, prepared and filed a modified plan, updated docket pleadings, and prepared the instant Application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
W. Scott de Bie, attorney	10.75 hours	$300.00	$3,225.00
	0	$0.00	$0.00
Total Fees for Period of Application			$3,225.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $154.13 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.05	$78.75
Postage		$44.38
Filing Fees		$31.00
		$0.00
Total Costs Requested in Application		$154.13

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,225.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of $154.13 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$3,225.00
Costs and Expenses	$154.13

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by W. Scott de Bie ("Applicant"), Attorney for Thomas Cravens and Cozette Cravens, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that W. Scott de Bie is allowed the following fees and expenses as a professional of the Estate:
>
> W. Scott de Bie, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $3,225.00
> Expenses in the amount of $154.13,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

8. **17-26897-E-13** **CARLOS/CLAUDIA BARAJAS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Thomas Gillis** **PLAN BY DAVID P. CUSICK**
11-17-17 [18]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 17, 2017. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is sustained.

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

A. Carlos Barajas and Claudia Barajas's ("Debtor") plan may not be proposed in good faith because they have significant extra income to provide;

B. A claim in Class 4 should be in Class 2 because it does not extend beyond the term of the Plan;

C. The Plan exceeds sixty months; and

D. Debtor may not have notified all creditors of this bankruptcy case.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on December 6, 2017. Dckt. 22. Debtor states that an amended plan will be filed.

RULING

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee reports that the Plan may not be proposed in good faith because Debtor proposes plan payments of $460.00, but disposable income on Schedule J is listed as $2,751.00. *See* 11 U.S.C. § 1325(a)(3).

The Chapter 13 Trustee notes that Yolo Federal Credit Union has been listed in Class 4, but the term of the loan for it does not extend beyond the plan term. Accordingly, the Chapter 13 Trustee argues that the claim should appear in Class 2. The claim is for a vehicle loan that was acquired on July 29, 2015, and that has a final payment due date of July 18, 2022.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 143 months due to plan payments being too low to pay a 100% dividend to unsecured claims within sixty months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Finally, Debtor appears to have not listed and notified all creditors for this bankruptcy case. Specifically, at the first Meeting of Creditors, Debtor reported repaying student loans outside of the bankruptcy case at $300.00 per month, but that debt is not listed on the schedules. The Chapter 13 Trustee does not believe that the students loan payments are causing unfair preferential treatment.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9. 17-25354-E-13 DPC-1 | **PETER/ALISON BIPPART** **Eric Schwab** | **MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)** **10-26-17 [27]**

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 26, 2017. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") filed the instant Objection to Peter Bippart and Alison Bippart's ("Debtor") discharge on October 26, 2017. Dckt. 27.

Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

DEBTOR'S RESPONSE

Debtor filed a Response on November 16, 2017. Dckt. 31. Debtor agrees that no discharge should be entered in this case because one was entered in a prior Chapter 7 case within four years of this case's petition date.

DISCUSSION

Debtor filed a Chapter 7 bankruptcy case on November 26, 2013. Case No. 13-35063. Debtor received a discharge on September 24, 2014. Case No. 13-35063, Dckt. 39.

The instant case was filed under Chapter 13 on August 14, 2017.

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, Debtor received a discharge under 11 U.S.C. § 727 on September 24, 2014, which is less than four years preceding the date of the filing of the instant case. Case No. 13-35063, Dckt. 39. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), 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. 17-25354), 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 17-25354, the case shall be closed without the entry of a discharge.

10.	**11-24766-E-13 TOG-2**	**GREGORIO DURAN AND FLOR LEON** **Thomas Gillis**	**MOTION TO AVOID LIEN OF CHASE BANK USA, N.A.** **11-20-17 [65]**

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Chase Bank USA, N.A., a corporation ("Creditor") against property of Gregorio Duran and Flor de Leon ("Debtor") commonly known as 357 Ridgecrest Circle, Suisun City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $16,167.82. An abstract of judgment was recorded with Solano County on March 31, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the petition date. The unavoidable consensual liens that total $266,500.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1,695.00 on Amended Schedule C. Dckt. 71.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gregorio Duran and Flor de Leon ("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 judgment lien of Chase Bank USA, N.A., a corporation, California Superior Court for Solano County Case No. FCM112575, recorded on March 31, 2011, Document No. 201100028312, with the Solano County Recorder, against the real property commonly known as 357 Ridgecrest Circle, Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. 17-23174-E-13 NICOLE PRESTON MOTION TO CONFIRM PLAN
MWB-2 Mark Briden 10-25-17 [44]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 25, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Nicole Preston ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 22, 2017. Dckt. 50. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Nicole Preston ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 25, 2017, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

12. 14-28140-E-13 MAX SHOFFNER — MOTION TO INCUR DEBT
RLC-3 Stephen Reynolds — 11-16-17 [40]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Not Provided. No proof of service was filed for the Motion.

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

The Motion to Incur Debt is denied without prejudice.

Max Shoffner, Jr., ("Debtor") seeks permission to obtaining financing to purchase real property, with a total amount of $375,000.00 and monthly payments of $2,500.00.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 29, 2017. Dckt. 43. He notes that no terms of the loan regarding the property to be financed have been provided, including interest rate, monthly payment, amount of down payment, or the property address.

Additionally, the Chapter 13 Trustee notes that a proof of service was not filed.

DEBTOR'S REPLY

Debtor filed a Reply on December 8, 2017. Dckt. 50. Debtor admits that a proof of service was not filed because the Motion was not served. Debtor states that an amended motion has been filed, leaving this matter "ripe for removal from calendar." *Id.*

RULING

A review of the docket shows that an Amended Motion has been filed and served under the same Docket Control Number, but it does not appear to address all of the Chapter 13 Trustee's concerns about fully disclosing the information for this proposed financing. *See* Dckts. 46–49.

Regardless of the substance of the Amended Motion, the amended filing—combined with Debtor's Reply—indicates that the present Motion is no longer being prosecuted. The Motion is denied without prejudice.

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 Max Shoffner, Jr., ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

13. **17-25942-E-13** **FIAZ JAVED** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-3 **Robert McCann**
11-13-17 [60]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 13, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled.

David Cusick ("the Chapter 13 Trustee") objects to Fiaz Javed's ("Debtor") claimed exemptions under California law because Debtor claimed a series of exemptions under the California Code of Civil Procedure that are not applicable without a spousal waiver. The Statement of Financial Affairs reveals that Debtor is married. Dckt. 23. Debtor filed a Spousal Waiver on November 16, 2017. Dckt. 65.

The Chapter 13 Trustee's Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled.

14. **17-20344-E-13** **MELISSA HOLT**
Mohammad Mokarram

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER OF CLAIM
11-30-17 [38]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 2, 2017. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $25.00 due on November 16, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

15. 15-28322-E-13 LISA TOLBERT MOTION TO MODIFY PLAN
MJD-1 Matthew DeCaminada 11-14-17 [121]

Final Ruling: No appearance at the December 19, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Lisa Tolbert ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on December 5, 2017. Dckt. 128. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Lisa Tolbert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 14, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.