

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 15.

The court has also reorganized the items for which the tentative rulings are issued, Items 1–14, attempting to first address the items in which short oral argument is anticipated.

January 9, 2018, at 3:00 p.m.

1.	<u>17-27297</u> -E-13 DPC-1	ARLEANER COLLINS Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-12-17 <u>[25]</u>
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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 December 12, 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. If any of these potential respondents appear

January 9, 2018, at 3:00 p.m.

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 overruled.
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David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that Arleaner Collins’s (“Debtor”) plan exceeds sixty months. The Chapter 13 Trustee argues that the Plan lists a debt in Class 2B that is secured solely by Debtor’s principal residence and cannot be valued under 11 U.S.C. § 1322(b)(2).

DEBTOR’S REPLY

Debtor filed a Reply on December 29, 2017. Dckt. 30. Debtor argues that Reverse Mortgage Solutions (“Creditor”) was placed mistakenly in Class 2B and should have been listed in Class 2A in the amount of \$27,864.50 at 4.00% interest with a monthly dividend of \$515.00. Debtor argues that the reverse mortgage is for property taxes and insurance.

RULING

Debtor’s Reply indicates that Creditor’s was supposed to be listed in Class 2A and was not an attempt to value the claim. The Reply also indicates that the amount of the debt is \$27,864.50, not the full value of Debtor’s property. Debtor agrees to reclassifying Creditor’s claim in Class 2A, which resolves the Chapter 13 Trustee’s objection, leaving the Plan to complete within sixty months.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan, as amended to list Creditor’s claim in Class 2A in the amount of \$27,864.50, 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 Arleaner Collins’s (“Debtor”) Chapter 13 Plan filed on November 2, 2017, as amended to list the claim of Reverse Mortgage Solutions (“Creditor”) in Class 2A in the amount of \$27,864.50 with 4.00% interest and a monthly dividend of \$515.00, 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.

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 December 1, 2017. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Steven Camillucci and Staci Camillucci ("Debtor") seek confirmation of the Modified Plan because they have separated and now incur different finances. Dckts. 59, 60. The Modified Plan calls for monthly payments of \$200.00 beginning November 25, 2017, with a 0.00% dividend to unsecured claims over the thirty-six month plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 19, 2017. Dckt. 65. The Chapter 13 Trustee asserts that Debtor is \$200.00 delinquent in plan payments, which represents one month of the proposed \$200.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the Modified Plan does not authorize payments that have been made to Ditech Financial LLC for pre-petition arrears of \$12,810.12. The Modified Plan authorizes ongoing mortgage payments only.

The Chapter 13 Trustee objects to the plan form submitted also. He argues that a new form plan was adopted and required to be used as of December 1, 2017, but Debtor submitted a plan using the prior form.

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

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

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

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

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

**APPEARANCE OF DEBTOR'S COUNSEL NOT REQUIRED
IF HE CONCURS WITH DENIAL WITHOUT PREJUDICE**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Discharge is denied without prejudice.

The Motion for Entry of Discharge has been filed by Peter Trevizo and Diane Trevizo ("Debtor"). With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. David Cusick's ("the Chapter 13 Trustee") final report was filed on December 5, 2017, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 13 Trustee has not been filed yet.

Debtor's Declaration (Dckt. 34) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has completed a financial management course and filed the certificate with the court;

- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on December 20, 2017. Dckt. 41. He argues that the Motion does not comply with Local Bankruptcy Rule 5009-1 and that Debtor has not shown any grounds for entry of an early discharge before the court approves the Chapter 13 Trustee's final report.

Additionally, the Chapter 13 Trustee states that the Notice of Plan Completion filed in this case states that "the Court will issue a discharge order" once the final report has been approved. Due to the time requirements for objections to the final report and to a Notice of Intent to Enter Discharge, the Chapter 13 Trustee expects that a discharge could be entered in this case by the end of January 2018 without any motion needed to be filed by Debtor.

RULING

While Debtor is entitled to file a motion seeking entry of discharge, one does not appear to be necessary in this case. Without filing such a motion, the court on its own would enter a Notice of Intent to Enter Discharge in this case. If no objections were filed, then the court would enter a discharge order for Debtor. Filing the Motion could be appropriate if there is a sufficient reason for the court to enter discharge early in this case, but Debtor has not presented any argument why an early discharge is warranted. The court will follow its usual procedure for entering discharge in Chapter 13 cases. 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 for Entry of Discharge filed by Peter Trevizo and Diane Trevizo ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 8, 2017. By the court’s calculation, 32 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). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion to Avoid Judicial Lien is continued to 3:00 p.m. on
xxxxxxx, 2018.**

This Motion requests an order avoiding the judicial lien of States Recovery Systems, Inc. (“Creditor”) against property of David Kennedy (“Debtor”) commonly known as 3612 Comstock Way, Carmichael, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$46,140.92. Exhibit A, Dckt. 43. An abstract of judgment was recorded with Sacramento County on February 24, 2016, that encumbers the Property.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 19, 2017. Dckt. 45. The Chapter 13 Trustee questions why the Motion was filed because that confirmed Plan does not provide for Creditor’s claim as secured. He notes that the claim and security instrument will survive any discharge if the Plan does not provide for the claim as secured, but even Creditor has not claimed any portion as secured in its proof of claim. Proof of Claim No. 2-1. The Plan calls for a 19.00% dividend to unsecured claims. Dckt. 5 at 4.

The Chapter 13 Trustee believes that the Motion may seek to reclassify Creditor's claim as secured in the amount of \$25,907.00 (not paid by the Plan or by Debtor directly) and have the remaining portion of the claim treated as unsecured through the Plan to receive a 19.00% dividend.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$250,000.00 as of the petition date. The unavoidable consensual liens that total \$149,093.00 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 § 704.730 in the amount of \$75,000.00 on Schedule C.

The Motion pleads that Debtor's Property "secures a judgment lien held by" Creditor. Dckt. 40 at 1. The Motion seeks to have Creditor's judgment lien "reduced to \$25,907 [with] the balance . . . treated as an unsecured claim." *Id.* at 2. Debtor appears to believe that Creditor's claim is secured. Nevertheless, the schedules, the confirmed plan, and Creditor's own proof of claim indicate that the claim is unsecured.

It appears that Debtor has discovered that Creditor's claim is secured. The Chapter 13 Trustee has identified a significant legal issue as to whether 11 U.S.C. § 522(f) can operate independently from the confirmed Chapter 13 Plan or whether the failure to address the secured claim in the Plan renders § 522(f) inapplicable.

The court continues the hearing to allow Debtor and the Chapter 13 Trustee to conclusively address the issue. A practical solution would be for Debtor to modify the plan to properly provide for this secured claim.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Kennedy ("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 hearing on the Motion is continued to **1:30 p.m. on xxxxxxxxxxxx, 2018.**

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 13, 2017. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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Eugene Nieri ("Debtor") seeks confirmation of the Modified Plan because he expects to earn an additional \$1,000.00 per month from a business expansion in the next year. Dckt. 74. The Modified Plan proposes plan payments of \$3,250.00 for four months, \$1,855.00 for eight months, and then \$2,900.00 for forty-eight months with a 35.00% dividend to unsecured claims. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 15, 2017. Dckt. 79. First, the Chapter 13 Trustee notes that the Plan relies upon the court approving a loan modification that has not been proposed. Without approval, Debtor would owe \$5,750.00 beginning December 25, 2017.

Second, the Chapter 13 Trustee notes that while the Modified Plan proposes a 35.00% dividend, Section 6.03 would reduce that dividend to 5.00% if a final loan modification is not approved. The Chapter

13 Trustee argues that the plan needlessly limits what unsecured claims will receive. He argues that if more funds are available, then the Plan should allow a 5.00% dividend as a minimum.

The Chapter 13 Trustee asserts that Debtor is \$2,711.00 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).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to increase plan payments to \$2,900.00 effective May 2018, but he has not provided any explanation about how he can afford that increase. Without a loan modification being approved, plan payments will increase to \$5,750.00 in December 2017. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

If Debtor does not receive a final loan modification (and if the court does not approve one), the Chapter 13 Trustee calculates that the Plan will complete in seventy-five months. *See* 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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*), Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2017. By the court's calculation, 40 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Passthrough Certificates, Series 2007-15N ("Creditor") holding a secured claim] opposes confirmation of the Plan on the basis that:

- A. Mele Vilingia's ("Debtor") plan was proposed in bad faith because it is blank;
- B. The Plan does not cure pre-petition arrears owed to Creditor; and
- C. The Plan is not feasible.

Creditor's objections are well-taken. 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan

payment of \$300.00 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$29,099.40 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The pleadings in this case are skeletal and incomplete. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Passthrough Certificates, Series 2007-15N (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on December 6, 2017. By the court's calculation, 34 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. Mele Vilingia ("Debtor") is delinquent;
- B. Debtor did not appear at the Meeting of Creditors;
- C. Tax returns have not been provided;
- D. Pay advices have not been provided;
- E. The Plan contains several errors and omissions;
- F. The Schedules are incomplete; and

G. The Plan fails the liquidation analysis.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$300.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance 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).

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).

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan payment of \$300.00 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. Additionally, the schedules are incomplete and contain errors. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor is not proposing a dividend to unsecured claims, but there is \$5,500.00 in non-exempt assets. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are not entitled to a dividend when there may be upward of \$5,500.00 in non-exempt assets.

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.

8. 17-26899-E-13 **JENNIFER MIZE** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
12-11-17 [23]

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 December 11, 2017. By the court’s calculation, 29 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.
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David Cusick (“the Chapter 13 Trustee”) opposes confirmation of the Plan on the basis that:

- A. Jennifer Mize (“Debtor”) failed to report prior bankruptcy cases;
- B. Debtor failed to attend the Meeting of Creditors;

- C. Debtor is delinquent;
- D. The Plan fails to provide for a mortgage claim, even though it is listed on Schedule J;
- E. The Plan is blank;
- F. Pay advices have not been provided;
- G. Tax returns have not been provided; and
- H. Debtor does not appear to be making regular mortgage payments.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee reports that Debtor failed to disclose prior bankruptcy cases on the petition. Those cases are:

- 1. Case No. 16-26710, filed on October 7, 2016, and dismissed on December 15, 2016,
- 2. Case No. 16-23636, filed on June 2, 2016, and dismissed on July 26, 2016,
- 3. Case No. 15-25895, filed on July 27, 2015, and dismissed on August 14, 2015, and
- 4. Case No. 15-24451, filed on June 1, 2015, and dismissed on June 19, 2015.

Debtor was required to report any bankruptcy cases filed within the prior eight years.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance 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).

The Chapter 13 Trustee asserts that Debtor is \$200.00 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor failed to list a filed claim for a mortgage in the Plan, but Schedule J shows a rent or home mortgage payment of \$2,000.00. Dckt. 15. The mortgage claim shows a monthly payment of \$2,237.74, with \$184,142.87 in arrears. Claim No. 1-1. Taking into account the required mortgage payments, Debtor expenses exceed her scheduled income by \$2,365.00 per month. Taken together, they suggest that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan payment of \$200.00 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

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).

Finally, the Chapter 13 Trustee raises a point that he is unsure of the last time Debtor made a mortgage payment. Based upon the filed proof of claim and the arrearage on that claim, the Chapter 13 Trustee believes that Debtor may not have paid her mortgage in more than seven years.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on November 17, 2017. By the court's calculation, 53 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.
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U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Jennifer Mize's ("Debtor") plan fails to provide for Creditor's claim;
- B. The Plan fails to cure pre-petition arrears;
- C. The Plan is not feasible; and
- D. The Plan was not filed in good faith.

Creditor's objections are well-taken. Creditor asserts a claim of \$558,736.11 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$485,000.00 and indicates that it is secured by a first deed of trust on Debtor's residence. The Plan does not provide for treatment of that claim.

Creditor alleges that the Plan is not feasible and violates the Bankruptcy Code because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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 respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$184,142.87 in pre-petition arrearages. The Plan does not propose

to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not disposable income to make plan payments. In fact, her net income from Schedules I and J is (\$2,365.00). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Finally, Creditor alleges that the Plan has not been proposed in good faith because of a history of successive bankruptcy filings by Debtor. As discussed with the Chapter 13 Trustee's Objection to Confirmation, Debtor failed to disclose four prior bankruptcy cases. Those cases are:

1. Case No. 16-26710, filed on October 7, 2016, and dismissed on December 15, 2016,
2. Case No. 16-23636, filed on June 2, 2016, and dismissed on July 26, 2016,
3. Case No. 15-25895, filed on July 27, 2015, and dismissed on August 14, 2015, and
4. Case No. 15-24451, filed on June 1, 2015, and dismissed on June 19, 2015.

Debtor was required to report any bankruptcy cases filed within the prior eight years.

Multiple Attorneys of Record Listed for Creditor

The court has addressed with Creditor's counsel on other occasions the possible confusion created by listing multiple attorneys on the pleadings as attorneys of record. For this Objection, Lee S. Raphael, Cassandra J. Richey, Bonni S. Mantovani, Anna Landa, Diana Torres-Brito, and Alexander G. Meissner are listed as "Attorneys for Creditor U.S. Bank National Association, as Trustee for SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2007-BC2."

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 U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 ("Creditor") holding a

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

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

10.	<u>17-28028</u> -E-13	NDILE NJENGE Randall Ensminger	MOTION TO SUBSTITUTE ATTORNEY 12-18-17 <u>15</u>
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**APPEARANCE OF NDILE NJENGE, CHAPTER 13 DEBTOR,
AND RANDALL ENSMINGER, ATTORNEY OF RECORD,
REQUIRED AT THE JANUARY 9, 2018 HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Not Provided. No Proof of Service was filed for the Motion. The court set a hearing for 3:00 p.m. on January 9, 2018. Dckt. 16.

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

The Motion to Substitute Attorney is XXXXX.

Ndile Njenge (“Debtor”) filed a “Substitution of Attorney” on December 18, 2017, in which Debtor asserts to be “the attorney in Pro-Per of record in the above bankruptcy case.” Dckt. 15. No motion was set for hearing, no notice was filed, no service was provided, no declaration was submitted, and no grounds were pleaded for the Motion.

The court set the matter for hearing on January 9, 2018, and ordered that Debtor and counsel appear personally. Dckt. 16.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

DISCUSSION

Here, Debtor appears to be the party who wants new representation. Nevertheless, no information has been provided about why Debtor wants to be self-represented, and the proper procedure for substitution has not been followed.

At the hearing, the parties reported **xxxxxxx**.

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 Substitute Attorney filed by Ndile Njenge (“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 Substitute Attorney is **xxxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 56 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.

Tommie Richardson ("Debtor") seeks confirmation of the Amended Plan because a property was being foreclosed upon. Dckt. 35. The Amended Plan proposes payments of \$600.00 for sixty months with a 100.00% dividend to unsecured claims and a lump sum payment in month sixty from the "sale of real property, adversary, or over-bid from foreclosure of real property." Dckt. 34. 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 December 18, 2017. Dckt. 38. 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). Additionally, Debtor admitted at the Meeting of Creditors that the federal income tax returns for the prior four tax years have not been filed. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). In the Chapter 13 Trustee's prior Objection to Confirmation (Dckt. 21), the Chapter 13 Trustee noted that Debtor's pleadings are not consistent about whether he receives pension funds, how much he receives, how long he has been receiving them, what his wife earns in wages, and whether he has received rental income. An accounting of Debtor's funds has not been provided yet. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's fees may not be reported accurately in this case. Prior documents, such as the Rights and Responsibilities, indicate that Debtor paid \$500.00 before filing and that \$4,000.00 is owed. Now, Debtor reports that \$500.00 was paid and that \$3,000.00 is owed.

The Chapter 13 Trustee is also concerned about the accuracy of documents about Debtor's real property. While the Chapter 13 Trustee is not concerned about the plan itself (because it proposes a 100.00% dividend), he is concerned that Debtor's interest in real property has not been made fully clear. The Chapter 13 Trustee objected previously on this ground because there was no information about when the property was purchased, how much was paid for the property, and whether Debtor and his non-filing spouse were married at the time. Debtor has not addressed those concerns although raised previously.

Also previously, the Chapter 13 Trustee noted that all debts may not be listed because the Chapter 13 Trustee received a letter dated June 26, 2017, about a "Cal State 9 Credit Union" loan and checking account. The Chapter 13 Trustee was not able to find anything that matched, however. He provided a copy of the letter to Debtor, who has not provided any additional information.

DEBTOR'S REPLY

Debtor filed a Reply on January 2, 2018. Dckt. 42. Debtor promises to file, serve, and set for hearing a new amended plan.

RULING

Debtor's position suffers from several major failings. First, Debtor wants to file an amended plan, but then he asks in the Reply for the court to confirm the current plan. Dckt. 42. More significantly, the proposed plan manifests bad faith (not merely a lack of good faith) by Debtor. Under the Plan before the court (Dckt. 34), at some time in the next five years, when Debtor decides when it is in his best interests (without regard to his duties under the Bankruptcy Code), he may sell the real property and pay creditors. The only creditor being paid will be Wells Fargo Bank, N.A., for Debtor's 2014 Jaguar and Debtor's counsel. Though this case was filed in August 2017, Debtor has not even filed a motion to employ a real estate broker to sell the real property.

The lump sum payment to be made sometime during the sixty months of the Plan is stated to be made from "sale of real property, adversary, or over-bid from foreclosure of real property. Plan ¶ 1.02, Dckt. 34. No adversary proceedings have been filed by Debtor.

On Schedule A/B, Debtor lists the Oakland property as having a value of \$1,000,000. Dckt. 13 at 3. On Schedule D, Debtor states that the Oakland property is encumbered by liens to secure the following

claims: (1) Caliber Home Loans in the amount of (\$333,006). *Id.* at 12. Thus, it would appear that the bankruptcy estate has \$650,000 of recoverable equity in the Oakland Property.

However, on the Statement of Financial Affairs, Debtor states that a foreclosure of the \$1,000,000 Oakland Property occurred on July 17, 2017. Statement of Financial Affairs Question 10, Dckt. 13. The present bankruptcy case was filed on August 8, 2017, one month later.

There is no adversary proceeding to vacate the foreclosure or any action being made to recover the \$1,000,000 asset.

On Schedule A/B, Debtor lists a second property, the Graeton Circle, Mather, California Property. *Id.* at 4. Debtor states that he is not on title, but that this is community property. Though community property, Debtor states that his interest has a value of only \$1.00. *Id.* Schedule A/B also provides the following information about the Mather Property: “FMV \$300,000 - Secured Claim of \$392K.” *Id.* With that information, there is no value for creditors in this case.

As further stated by the Chapter 13 Trustee, Debtor has provided conflicting, inconsistent statements under penalty of perjury as to his income. *See* Chapter 13 Trustee’s Opposition, Dckt. 38 at 2:5.5–18. The Chapter 13 Trustee provides evidence that Debtor had rental income through April 2017, but such information was not disclosed on the Statement of Financial Affairs. *Id.* at 2:13–22.5.

In denying confirmation of the prior Plan, the court addressed some of Debtor’s financial contentions. Civil Minutes, Dckt. 27. The court discussed Debtor’s failure to provide for litigation to try to reverse the foreclosure sale in the prior Plan. The court’s comments in connection with the prior Plan were pointed and direct:

The conduct of Debtor shows a pattern of intentional misrepresentation and misstatement under penalty of perjury. Given that Debtor is represented by counsel, it appears clear that he knew of his obligations to be truthful and accurate and either intentionally hid such assets from his attorney, or the scheme to hide the assets is broader than merely Debtor.

Id. at 4. The current Plan does not provide for any more specific terms for a plan or demonstrate any action being taken by, or even to be taken by, Debtor.

A review of the docket shows that a new plan has not been filed. 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 Tommie Richardson (“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.

12. [17-25904-E-13](#) **BARBARA MYERS** **MOTION TO CONFIRM PLAN**
NUU-1 **Chinonye Ugorji** 11-14-17 [\[29\]](#)

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 14, 2017. By the court’s calculation, 56 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.
--

Barbara Myers (“Debtor”) seeks confirmation of the Amended Plan because she needed to increase plan payments, add a secured claim, and correct information in the Plan. Dckt. 31. The Amended Plan proposes payments of \$193.00 for one month followed by \$1,817.00 for fifty-nine months with a 0.00% 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 December 15, 2017. Dckt. 36. The Chapter 13 Trustee argues that Debtor has proposed Enslinger Provisions in the Amended Plan but has not included all of the provisions. These provisions attempt to balance the rights and interests of Creditor with the automatic stay and adequate protection provisions of 11 U.S.C. § 361 put into place by Congress. By not including all of the carefully-negotiated terms, Debtor has presented plan provisions that are not confirmable.

This is not Debtor’s first recent Chapter 13 Plan. Her prior case was filed on January 1, 2017. Bankr. E.D. Cal. No. 17-20130. Debtor was represented by the same counsel in the prior case as in the current case. The prior case was dismissed due to Debtor being at least \$2,535.00 in default in plan payments. Confirmation of Debtor’s Plan in the prior case was denied, and Debtor then failed to propose an amended Plan. 17-20130; Civil Minutes, Dckt. 32. The prior case was dismissed on July 28, 2017.

Debtor commenced the current case on September 4, 2017. Debtor’s Original Plan was denied confirmation. Civil Minutes, Dckt. 28. One of the grounds for denial of confirmation was the incomplete Enslinger Additional Provisions. Debtor has stubbornly included the same incomplete provisions in this Amended Plan. In substance, those incomplete provisions impermissibly modify the creditor’s secured claim (for which Debtor’s residence is the only collateral), staying creditor’s rights to be paid for five years so long as Debtor is “in process of a loan application.” Debtor leaves out the provisions that the “applications” must be prosecuted in good faith, that creditor is entitled to seek relief from the automatic stay if Debtor does not prosecute such application in good faith, or that upon denial of the application, creditor may have the stay terminated.

Debtor has now repeatedly proposed an Additional Plan Provision to modify the creditor’s rights on its secured claim for five years, suspending any right to foreclose, eviscerating the provisions of 11 U.S.C. § 362(d) and § 1322(b)(2), and giving Debtor the right to occupy the property without paying the secured claim.

The Chapter 13 Trustee also questions whether attorney’s fees have been reported accurately. The Amended Plan lists \$3,000.00 paid prior with \$1,000.00 due through the Plan, but the prior plan, Statement of Financial Affairs, and Rights and Responsibilities each list \$2,000.00 as paid already and \$2,000.00 as due through 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 Barbara Myers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [17-27077-E-13](#) **MICHAEL SCALLIN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Cianchetta** **PLAN BY DAVID P. CUSICK**
12-6-17 [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 and Debtor’s Attorney on December 6, 2017. By the court’s calculation, 34 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. Michael Scallin (“Debtor”) is delinquent;
- B. Tax returns have not been provided;

- C. The Plan should be for sixty months; and
- D. The Statement of Financial Affairs conflicts with Debtor's latest pay advice.

The Chapter 13 Trustee's objections are well-taken. The Chapter 13 Trustee asserts that Debtor is \$855.86 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 1.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee argues that 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). That is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

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.

Schedule I indicates gross income of \$3,640.00 per month, but Debtor's pay advices indicate that the amount is \$9,056.66 per month. Debtor listed being under median income, but according to the Chapter 13 Trustee's review of his pay advices, Debtor is over median income and should propose a plan with a term of sixty months, not thirty-six.

Finally, the Chapter 13 Trustee notes that the Statement of Financial Affairs conflicts with the most recent pay advices. Debtor listed year-to-date income of \$19,826.12, but the pay advices indicate his year-to-date gross income as of October 27, 2017, was \$86,920.00. FN.1.

FN.1. Though relegated to a footnote, Debtor should not minimize the outcome if the court determines that false information has been provided under penalty of perjury. Taken at face value, Schedules I and J indicate that Debtor is all but destitute. For a family of two (including a minor child), Debtor appears to grossly, and intentionally, understate expenses. Debtor, if the Chapter 13 Trustee's information is accurate, has understated his year-to-filing income by more than 300%. That Debtor has failed to provide copies of his most recent tax return fuels further skepticism of Debtor's good faith.

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.

14.	<u>14-28140</u> -E-13 RLC-3	MAX SHOFFNER Stephen Reynolds	MOTION TO INCUR DEBT 12-7-17 <u>46</u>
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**APPEARANCE OF STEPHEN REYNOLDS, COUNSEL FOR DEBTOR
REQUIRED FOR JANUARY 9, 2018 HEARING**

NO 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 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 December 7, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Incur Debt is denied.
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Max Shoffner, Jr. (“Debtor”) seeks permission to obtain financing to purchase real property, with a total amount of \$375,000.00 and monthly payments of \$2,500.00. FN.1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Debtor has filed two Motions for Authority to obtain the financing, using the same Docket Control Number, RLC-003, for both. Dckts. 40, 46. The first motion was denied after the December 19, 2017 hearing. Civil Minutes, Dckts. 51, 52; Order, Dckt. 53. The denial was without prejudice.

APPLICABLE LAW

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).

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 27, 2017. Dckt. 54. The Chapter 13 Trustee opposes Debtor obtaining court approval without providing details about the specific purchase, relying on Federal Rule of Bankruptcy Procedure 4001(c)(1)(A) to require that a motion to obtain credit be accompanied by a copy of the credit agreement. A copy of the agreement for this Motion has not been provided.

The Chapter 13 Trustee also raises a procedural point about service. He notes that the Proof of Service indicates that he was served on December 7, 2017, but he was actually served on December 8, 2017. In this case, the one-day difference is still within the minimum service requirements for this district.

Finally, the Chapter 13 Trustee apologizes for filing the Opposition one day late, explaining that a combination of holiday vacations and vehicle trouble prevented the Opposition from being filed timely.

DISCUSSION

At the December 19, 2017 hearing when the first Motion was presented, the court noted that this Amended Motion “does not appear to address all of the Chapter 13 Trustee’s concerns about fully disclosing the information for this proposed financing.” Dckt. 52 at 2. Despite that warning, Debtor has not filed supplemental pleadings indicating the specific details for the credit agreement he seeks to have approved.

Debtor must fund the Chapter 13 Plan with monthly payments of \$1,340.00. Order Approving Stipulated Modified Plan. Dckt. 39. Debtor has stated under penalty of perjury that his projected disposable income is only \$1,347.92 per month after paying all of his *reasonable, necessary* expenses. Amended Schedules I and J, Dckt. 37. That is paying only \$2,100 in rental expense.

Now, Debtor represents that he actually has an extra \$400 per month, so he can make a monthly mortgage payment of \$2,500.00. Additionally, Debtor will have enough money to ensure that property taxes and insurance (which appear to be in the \$2,500 monthly payment), home maintenance, and repairs are made—all without missing a beat in making the \$1,340.00 monthly plan payment.

Debtor now raises serious issues concerning the accuracy of the information provided under penalty of perjury on Schedules I and J. The court, the Chapter 13 Trustee, and parties in interest have relied upon those statements under penalty of perjury. Debtor now appears to be stating under penalty of perjury in his current declaration that the earlier financial information is not accurate.

Without reviewing details for the proposed debt, the court cannot determine that incurring additional debt is in the best interest of Debtor or of the Estate. Based on Debtor's prior financial information under penalty of perjury, he is financially unable to make the proposed \$2,500.00 monthly payment.

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 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.

FINAL RULINGS

15. [17-24713](#)-E-13 RICHARD/STACI LASBY MOTION TO CONFIRM PLAN
DBJ-1 Douglas Jacobs 11-15-17 [27]

Final Ruling: No appearance at the January 9, 2018 hearing is required.

The Motion to Confirm is dismissed without prejudice.

Richard Lasby and Staci Lasby (“Debtor”) having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on December 20, 2017, Dckt. 36; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick (“the Chapter 13 Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm filed by Richard Lasby and Staci Lasby (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 36, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2017. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Monica Steinhart (“Debtor”) has filed evidence in support of confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 15, 2017. Dckt. 47. The Chapter 13 Trustee calculates that the Modified Plan will complete in sixty-one months according to its terms because it calls for payments of \$365.55 to begin in January 2018 and last for forty-eight months. December 2017 is the thirteenth months of the Plan, though. The Chapter 13 Trustee received a payment of \$350.00 on November 22, 2017, which is not included in the Plan.

The Chapter 13 Trustee does not oppose correcting Section 6 of the Modified Plan as follows:

As of November 30, 2017, Debtor has paid a total of \$9,760.29 to the Chapter 13 Trustee. Commencing with the payment due January 25, 2018, Debtor shall pay \$365.55 for forty-seven months.

DEBTOR'S RESPONSE

Debtor filed a Response on December 28, 2017. Dckt. 50. Debtor agrees with the Chapter 13 Trustee both that there are forty-seven remaining payments and that \$9,760.29 has been paid as of November 30, 2017. Debtor agrees that beginning on January 25, 2018, Debtor shall pay \$365.55 per month for forty-seven months.

RULING

The Modified Plan, as amended and agreed to by Debtor and the Chapter 13 Trustee (1) to correct the remaining payments in Section 6 of \$365.55 per month from forty-eight months to forty-seven months and (2) to show Debtor as having paid \$9,760.29 as of November 30, 2017, 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 Monica Steinhart ("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 22, 2017, as amended (1) to correct the remaining payments in Section 6 of \$365.55 per month from forty-eight months to forty-seven months commencing January 25, 2018, and (2) to show Debtor as having paid \$9,760.29 as of November 30, 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.

Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2017. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Andrew Reed and Kathleen Reed (“Debtor”) have filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed Response indicating non-opposition on December 15, 2017. Dckt. 138. 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 Andrew Reed and Kathleen Reed (“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 28, 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.

18. [17-25049](#)-E-13 **AUSTREBERTO PEREZ** **MOTION TO CONFIRM PLAN**
NF-1 **Nikki Farris** **11-9-17 [28]**

Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 56 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. Austreberto Perez ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 22, 2017. Dckt. 41. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Austreberto Perez (“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 9, 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.

19.	<u>17-26975</u> -E-13 DPC-1	JAGJIT SIDHU AND PALWINDER KAUR Thomas Gillis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-7-17 [<u>13</u>]
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Final Ruling: No appearance at the January 9, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on October 23, 2017, is confirmed.**

Counsel for Jagjit Sidhu and Palwinder Kaur (“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.

20.	<u>17-21490</u> -E-13 MRL-3	TOU VANG AND KA MOUA Mikalsh Liviakis	MOTION TO MODIFY PLAN 12-1-17 [<u>64</u>]
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Final Ruling: No appearance at the January 9, 2018 hearing is required.

The Motion to Confirm the Modified Plan is dismissed without prejudice.
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Tou Vang and Ka Moua (“Debtor”) having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 1, 2018, Dckt. 72; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David

Cusick (“the Chapter 13 Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Tou Vang and Ka Moua (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 72, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

21.	<u>17-26898-E-13</u> MCC-7	ANA HENRIQUEZ Timothy McCandless	MOTION TO CONFIRM PLAN 11-16-17 <u>[29]</u>
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Final Ruling: No appearance at the January 9, 2018 hearing is required.

The Motion to Confirm the Amended Plan is dismissed without prejudice.

Ana Henriquez (“Debtor”) having filed a “Withdrawal of Plan and Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on December 22, 2017, Dckt. 54; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick (“the Chapter 13 Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Ana Henriquez (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure

41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dekt. 54, 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 dismissed without prejudice.

22.	<u>17-26977</u> -E-13 DPC-1	GERARDO REYES Thomas Gillis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-12-17 <u>[36]</u>
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Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 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 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.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The Chapter 13 Trustee has not received any proof of consent for a creditor's treatment in the additional provisions;
- B. A claim listed in Class 2A does not match what the creditor has filed, and it should be valued because it was incurred more than 910 prior to filing this case; and
- C. A claim listed in Class 4 should be listed in Class 2 because it will complete during the life of the Plan.

DEBTOR'S NON-OPPOSITION

Gerardo Reyes ("Debtor") filed a Non-Opposition on December 18, 2017, indicating that he will file an Amended Plan. Dckt. 40.

RULING

No amended plan has been filed. The Chapter 13 Trustee's objections are well-taken. The Additional Provisions of the Plan list F.C.I. Lender Services, Inc. as consenting to its treatment in the Plan, but the Chapter 13 Trustee has not received any confirmation of that. Without confirmation, the Plan proposes to pay only \$17,339.00 of the \$41,115.00 claim listed on Schedule D. *See* 11 U.S.C. § 1322(a)(5).

Second, Debtor lists a claim of \$15,935.00 in Class 2A for a 2010 International Pro-Star Truck to be paid fully, even though the filed claim shows \$18,903.61 as secured, and even though the debt was incurred on November 25, 2013. The Chapter 13 Trustee argues that the claim should be valued, but no such motion has been filed.

Finally, the Plan lists Bank of America Auto in Class 4 on a claim that Debtor admitted at the Meeting of Creditors will complete in forty-five months. Because the claim will complete within the life of the Plan, the Chapter 13 Trustee argues that the Plan should provide for the claim in Class 2.

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.

Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2017. By the court's calculation, 29 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 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.

<p>The Objection to Confirmation of Plan is overruled.</p>

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that it relies upon an unfiled motion to value for a 2014 Ford Escape ("Vehicle").

DEBTOR'S RESPONSE

Sean Odom and Virginia Odom ("Debtor") filed a Response on January 3, 2018. Dckt. 26. Debtor notes that Ford Motor Credit Company LLC ("Creditor") filed a proof of claim in a secured amount that eliminates the need for a motion to value.

RULING

A review of the claims filed in this case shows that Creditor filed Claim No. 9-1 on December 11, 2017, for the Vehicle. Creditor's assertion of its claim and of the value of the Vehicle are each slightly lower than Debtor provides for in the Plan. Filing of that claim appears to resolve the Chapter 13 Trustee's objection.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 Sean Odom and Virginia Odom’s (“Debtor”) Chapter 13 Plan filed on November 1, 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.

24.	<u>17-25917</u> -E-13 TRN-2	MATTHEW TORST Tiffany Norman	MOTION TO CONFIRM PLAN 11-7-17 <u>[21]</u>
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Final Ruling: No appearance at the January 9, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on November 7, 2017. By the court’s calculation, 63 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). Parties requesting special notice and the Office of the United States Trustee were not served. However, as discussed below, the court waives any such defect.

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Matthew Torst (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on November 15, 2017. Dckt. 29.

Debtor has failed to provide sufficient notice, however. Parties requesting special notice were not served. *See* Dckts. 12, 13. The Office of the United States Trustee was not served as required by the U.S. Trustee Guidelines.

Though Debtor has failed to serve JP Morgan Chase Bank, N.A. as provided in the Request for Special Notice (Dckt. 12), the Plan provides for its claim in Class 4, which results in the immediate termination of the automatic stay and there being no modification of the creditor’s rights. This shortcoming may be overlooked.

However, the Plan seeks to cure the \$24,299.00 arrearage on the other claim secured by the Chico Property, with the Plan identifying the “creditor” as “Shellpoint.” Plan ¶ 2.08(c), Dckt. 24. Proof of Claim No. 4 appears to be for this claim, with the creditor identified as “Bank of America.” FN.1. Proof of Claim No. 4 requests that notices for “Bank of America” are to be sent to Shellpoint Mortgage Servicing, which is not the creditor but the servicer for the creditor.

FN.1. The court notes that the “Bank of America” creditor is not specifically identified as to which of the seven or eight federally insured financial institutions or dozen other entities with the words “Bank of America” in their names is the actual creditor. If the creditor is unwilling to correctly be identified, it is difficult for the court to have heartburn over how the service is made for that creditor when it is sent to the servicer who filed the cryptic identifier.

As to the U.S. Trustee, the Chapter 13 Trustee has weighed in with an affirmative statement of non-opposition. The U.S. Trustee would have received an electronic notification, and while not sufficient as to service, it appears that the interests the U.S. Trustee would have had have been sufficiently addressed by the Chapter 13 Trustee’s review.

The court is confident that Debtor’s counsel will not have such shortcomings in future pleadings.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Matthew Torst (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on November 15, 2017. Dckt. 29. 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 Matthew Torst (“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 7, 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.