

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 30, 2019 at 2:00 p.m.

1.	<u>17-22405</u> -C-13	JUAN/MARGUERITE RODRIGUEZ	CONTINUED MOTION TO INCUR DEBT
	<u>MS-3</u>	Mark Shmorgon	3-14-19 <u>[70]</u>

Thru #2

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.

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

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

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

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

Juan Rodriguez and Marguerite Rodriguez ("Debtors") seek permission to purchase a 2015 Ford Edge to replace a 2011 Ford Fusion totaled in a car accident on December 27, 2018, with a total purchase price of \$22,373.61 and monthly payments of \$499.67 to New Roads Auto Loans over 60 months with a 11.95% interest rate.

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).

Debtors do not address the reasonableness of incurring debt to purchase a vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtors owned a 2011 Ford Fusion. Debtor seeks to borrow \$22,373.61 to purchase a vehicle with high interest rate.

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge— 11.95%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase this vehicle when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a car and attempt to borrow money at a 11.95% interest rate.

The court continued the April 16, 2019 hearing to allow Debtors additional time to attempt to obtain a loan with more appropriate interest rate.

On April 27, 2019, Debtor filed a Supplemental Exhibit indicating that Debtor has since negotiated a 10% interest rate, a 1.95% reduction from the interest rate stated in Debtor’s Motion. ^{FN.1}

FN. 1. Interestingly, the interest rate on the obligation secured by the vehicle lost in the accident was only 5.5%. Plan, Dckt. 5. It appears that Debtor did not seek authorization to use the insurance proceeds to obtain a replacement vehicle and continue to pay the creditor, being secured by the replacement vehicle, through the Chapter 11 Plan.

At the hearing -----.

~~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 Juan Rodriguez and Marguerite Rodriguez (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is confirmed.

Juan Rodriguez and Marguerite Rodriguez ("Debtors") seek confirmation of the Modified Plan because Debtors surrendered a vehicle that was totaled in an accident. Dckt. 79 (Declaration). The Modified Plan proposes to pay \$1,370 per month for the remainder of the plan (months 23-60). Dckt. 81 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 16, 2019. Dckt. 85. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 67 months due to insufficient monthly plan payments, the payment would need to increase from \$1,370.00 to \$1,425.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

DEBTORS' RESPONSE:

Debtors filed a response on April 16, 2019 (Dckt. 89) stating that Debtors agree that the Plan payment should be increased to \$1,425.00 and request that it the change be incorporated in the Order

confirming the Plan.

Absent evidence that the Trustee does not agree to the Debtors modification in the Order confirming, 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 Juan Rodriguez and Marguerite Rodriguez (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on March 14, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

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

Vishaal Virk ("Debtor") seeks confirmation of the Modified Plan in order to provide for a previously disputed secured claim. Dckt. 219 (Declaration). The Modified Plan proposed to make the same monthly payments for the remainder of the plan and relies on a lump sum payment from Debtor's brother. Dckt. 200 (Modified Plan). Debtor's brother Karran Virk submitted a sworn declaration that he would contribute a \$20,130.00 lump sum payment on or before April 25, 2019. Dckt. 221. 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 April 16, 2019. Dckt. 223. The Trustee states that he is unable to determine the payment amounts provided for in the special provision of the Plan with respect to Creditor Ronny Dhaliwal.

DEBTOR'S RESPONSE:

Debtor filed three documents subsequent to the Trustee's Opposition. Dckts. 226; 228; 230. In response to the Trustee's Opposition the Debtor requests an additional 30 days to attempt to resolve a conflict with Creditor Ronny Dhaliwal. The other two filings are in response to an Opposition by Ronny

Dhaliwal that was purportedly served on the required parties but not filed with the court. Debtor attaches the Creditor's document to the response. Dckt. 231.

DISCUSSION:

At bottom, whether Debtor's Plan is confirmable hinges on the treatment of Creditor Ronny Dhaliwal's claim. As noted by the Trustee, Debtor and Creditor have been involved in both an adversary proceeding concerning dischargeability and several contested matters in this proceeding (Objection to Claim, Avoidance of Lien). Additionally, the ultimate resolution of the Lien Avoidance matter does not appear to have an Order but reflects in the Civil Minutes entered on November 9, 2015 that the matter was resolved by Stipulation. Dckt. 156. However no Stipulation or Order are docketed to document the resolution of the proceeding.

Looking at the proposed Modified Plan, creditor Ronny Dhaliwal is to be paid in full before the sixtieth month of the Plan. Mod Plan § 7.01, Dckt. 220 at 7. The Ronny Dhaliwal proof of claim is for \$344,568.66. Proofs of Claim Nos. 9, 10.

Though the Civil Minutes for the hearing on the Motion to Avoid the Lien of Ronny Dhaliwal state:

MOTION was:
Granted
Resolved by stipulation

ORDER TO BE PREPARED BY: Peter G Macaluso
Sean Gavin

Dckt. 156.

No stipulation has been filed with the court and there is no order on the Docket for the Motion to Avoid Contested Matter.

At the hearing -----.

The Modified Plan **xxxxxx** with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is **xxxxxx**

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 Vishaal Virk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is **xxxxxx**

Thru #5

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 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 December 15, 2018. 28 days' notice is required. That requirement was met.

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.

<p>The hearing on the Motion for Entry of Discharge is XXXX.</p>

The Motion for Entry of Discharge has been filed by Cleveland Bellard ("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. Debtor alleges that he has completed all required Plan payments. David Cusick's ("the Chapter 13 Trustee") final report was has not been filed. The order approving final report and discharging the Chapter 13 Trustee has not been entered. The entry of an order approving the final report is evidence that the estate has not yet been administered.

Debtor's Declaration (Dckt. 238) 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).

TRUSTEE'S RESPONSE:

The Trustee is not certain that all Plan payments have been made. The Trustee notes that \$200,572.00 has been paid to date and all allowed claims have been paid in full except whatever attorney fees may be owing pursuant to amended Claim No. 6. The Trustee has a balance of \$155.51 on hand, had not filed the Notice to Debtor of Completed Plan Payments, the Trustee's Final Report and Account, or the Order Approving the Final Report and Discharging the Trustee. The Trustee also notes that no objection to Claim No. 6 is pending.

CREDITOR RESPONSE:

On January 2, 2018 (13 days prior to the hearing), Creditor Carole Rominger responded to Debtor's Motion. Creditor claims that Debtor is improperly seeking to Object to its claim of attorneys fees and/or seeking to value collateral. Creditor asserts that the relief sought by Debtor requires 35 days notice and they were only provided 28 days.

DEBTOR RESPONSE:

Debtor's counsel responds that Debtor will file an Objection to Claim No. 6 to be set for hearing on March 26, 2019. Debtor requests that this motion also be heard on the same date. Debtor also requests that the Creditor's Response be stricken claiming it was filed late.

DISCUSSION:

The January 15, 2019 hearing was continued to permit Debtor to file an Objection to Claim No. 6. Dckt. 255. The court notes that the hearing on the now filed Objection to Claim is set for April 30, 2019. Dckt. 270.

At the hearing ----.

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

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

The Motion for Entry of Discharge filed by Cleveland Bellard ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

On February 11, 2019, Debtor filed the Objection to Claim of Carole Rominger, Amended Proof of Claim No. 6. Dckt. 257. Debtor objects to the additional of \$21,650.00 in attorney's fees and \$3,590.01. It is asserted that there is no detailed breakdown of any attorney's fees and costs. Objection, p. 3:21-26; Dckt. 257.

Debtor states that Creditor filed a motion for relief from the stay, which was discussed by Creditor. Creditor did not seek an award of attorney's fees or costs in that contested matter. Creditor also filed a motion to convert the case, which was denied. *Id.*, p. 4:6-14.

Debtor states that he valued his 50% interest in the Property securing Creditor's claim at \$82,500. Debtor file motions to avoid judicial liens using that value, which motion were unopposed and granted. *Id.*, p. 4:16.5-22.5. However, Debtor acknowledges that he never filed a motion to value Creditor's secured claim. Therefore, Debtor concludes that Creditor's claim is undersecured and as such the attorney's fees must be denied - even if such denies Creditor her Due Process rights to have a day in court on the issue.

Debtor contends that he will be prejudiced if the court does not deny Creditor attorney's fees, since he has performed a plan that his premised on his unadjudicated value of Creditor's secured claim.

No opposition has been filed to the Objection to Claim. On April 4, 2019, a Joint Notice of Settlement was filed. Dckt. 280. In it Debtor and Creditor state that a settlement has been reached, it is in the process of being documented, and a proposed order will be lodged with the court.

As of the court's April 29, 2019 review of the Docket – twenty-five (25) days after the Notice was filed, no settlement has been filed with the court.

At the hearing **XXXXXXXXXXXXXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

Rafael Quiroz and Veronica Quiroz ("Debtors") seek confirmation of the Modified Plan to address a missed car payment as a result of unanticipated vehicle repair expenses. Dckt. 36 (Declaration). The Modified Plan proposes to address the missed payments by paying \$2,050.00 for 18 months and then increase payments to \$3,010.00 for 34 months. Dckt. 38 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") Response on April 16, 2019. Dckt. 44. The Trustee requested a correction in § 3.05 such that the additional fees of \$3,000.00 be changed to \$3,050.00 in the order confirming to agree with the fees stated in the previously confirmed plan.

DEBTORS' REPLY:

Debtors agree to make the requested correction in the order confirming.

RULING:

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 Rafael Quiroz and Veronica Quiroz (“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 March 15, 2019, as corrected per the Trustee’s request, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall state the amendment to provide that the additional fees are \$3,050.00 as stated in the previously confirmed plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #8

Final Ruling: No appearance at the April 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Travis Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$15,000.00.

The Motion filed by Piotr Reysner and Celestial Reysner (“Debtors”) to value the secured claim of Travis Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Debtor is the owner of a 2016 Nissan Pathfinder (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle’s title secures a purchase-money loan incurred on July 31, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$30,723.00. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$15,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Piotr Reysner and Celestial Reysner (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union (“Creditor”) secured by an asset described as 2016 Nissan Pathfinder (“Vehicle”) is determined to be a secured claim in the amount of \$15,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$15,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

Piotr Reysner and Celestial Reysner ("Debtors") seek confirmation of the Amended Plan. Dckt. 24 (Declaration). The Amended Plan proposes monthly payments of \$947.00 and proposes a 0% dividend to general unsecured creditors. Dckt. 25 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 3, 2019. Dckt. 34. The Trustee states the following in support of the Opposition:

1. Debtors have not filed all required tax returns per statements made at the March 28, 2019 Meeting of Creditors.

2. Debtors list Natomas Park Master Ass'n in Class 2(A) of the Plan. Debtors do not list any real property on their Schedules A and D and the Trustee is not clear why the creditor is entitled to secured treatment.

3. Debtors list \$30,000.00 of priority claims, including the State Bar of California. The Trustee

is not certain that this creditor is entitled to priority treatment.

4. The Debtors Plan relies on a Motion to Value. The court notes that the Motion to Value is set for hearing and the court has proposed a final ruling in favor of the Debtors.

DISCUSSION:

At the hearing-----.

The Amended Plan **xxxx** with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is **xxxx**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Piotr Reysner and Celestial Reysner (“Debtors”) (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Thru #10

Final Ruling: No appearance at the April 30, 2019 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 4-1 of Constantio Padilla is sustained, and the claim is disallowed in its entirety.

Paul Stanley and Michelle Stanley, the Chapter 13 Debtors, ("Objector") requests that the court disallow the claim of Constantio Padilla ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$38,634.87. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is December 6, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 10.

DISCUSSION

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

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

The deadline for filing a proof of claim in this matter was December 6, 2018. Creditor's Proof of Claim was filed on February 8, 2019. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Constantio Padilla ("Creditor") filed in this case by Paul Stanley and Michelle Stanley, the Chapter 13 Debtors, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4-1 of Constantio Padilla is sustained, and the claim is disallowed in its entirety.

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

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

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

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 Amended Plan is XXXXX.

Paul Stanley and Michelle Stanley ("Debtors") seek confirmation of the Amended Plan. Dckt. 45 (Declaration). The Amended Plan provides for two missed post-petition payments and anticipate the sale of real property within 24 months to complete their proceeding. Dckt. 46 (Modified Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 1, 2019. Dckt. 51. The Trustee questions the Debtors ability to make all required plan payment as it relies on income from their construction business. The Trustee notes the Debtors statements at the Meeting of Creditors support the Trustee's concerns.

CREDITOR OPPOSITION:

Secured Creditor Bank of New York Mellon, FKA The Bank of New York, as Trustee for registered Holders of CWABS, Inc., Asset-Backed Certificates, Series 2006-3, filed an Opposition on April 10, 2019. Dckt. 55. Secured Creditor states that its pre-petition arrears do not have a material payment until month 20 of plan per Section 7.04 of the plan and post-petition arrears do not have a material payment until

month 21 of the plan per Section 7.05 and 7.08. Secured Creditor objects to the step up in payments approximately 20 months into the plan and states that the plan lacks evidence to support the ability to make those payments. Creditor notes that Debtors' plan anticipates the sale of real property by month 24 of the plan; however, Creditor argues there is not certainty that the property will be sold.

DISCUSSION:

At the hearing -----.

The Amended Plan **xxxxx** with 11 U.S.C. §§ 1323, 1325(a), and 1329 and is **xxxxx**.

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 Paul Stanley and Michelle Stanley ("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 Amended Plan is **xxxxx**.

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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is ~~xxxxx~~, and Creditor's secured claim is determined to have a value of \$~~xxxx.xx~~.

The Motion filed by Michael Enos and Phyllis Enos ("Debtors") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Debtor is the owner of property listed on Schedule B including a vehicle, household items, retirement account, bank accounts, and inventory related to a business ("Property"). Debtor seeks to value the Property at a replacement value of \$49,797.44 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor filed Proof of Claim No. 6-2 on March 23, 2019, after the filing of Debtors Motion to Value. The Proof of Claim asserts that \$176,829.58 is secured by the Property and that \$8,223.00 is a priority unsecured claim.

TRUSTEE RESPONSE:

The Trustee filed a response that he does not oppose the motion.

IRS OPPOSITION:

The IRS states that because the Debtor's filed a Motion to Value prior the IRS filing its claim, the motion to should be summarily denied as it does not comply with the Local Rules. Additionally, the IRS disputes the Debtor's valuation of their CalPERS pension listed on Schedule B Line 21 as \$26,622.44. The IRS notes that the Debtor's Schedule I reflects that their monthly pension disbursement is \$8,996.85. The IRS argues that over a 60-month term the payments from the pension would total \$537,960.00, suggesting that the pensions value is far greater than the entire federal tax liability reflected in the IRS' Proof of Claim.

FN. 1

FN. 1. The proposed Amended Chapter 13 Plan filed on April 16, 2019, has the Debtor funding the Plan with \$1,533 a month for sixty months, which is enough to fund their car loan and what they compute to be the Internal Revenue Service secured claim. Dckt. 30. The Debtor is only able to eke out a 0.00% dividend to creditors holding general unsecured claims.

This occurs notwithstanding Debtor having \$9,157.70 a month in income. Schedule I, Dckt. 1. No income is listed for the co-debtor Phylis Enos. For the two debtors, their monthly expenses are (\$7,609.29), which then yields them \$1,548.50 to fund the plan.

However, looking at Schedules I and J, Debtor makes no provision for the payment of any state or federal income taxes on \$110,100 a year. *Id.*, Dckt. 1 at 36-40. No explanation appears for why these two debtors are exempted from federal and state tax laws for their \$110,100 annual income.

The court also notes that Debtor states under penalty of perjury making \$900 a month "charitable contributions and religious donations," which total \$10,800 a year. Though driven to bankruptcy and unable to make any payments to creditors holding general unsecured claims, Debtor purports to be making more than \$10,000 a year in donations and contributions.

On the Statement of Financial Affairs Debtor states under penalty of perjury that no gifts or contributions in excess of \$600 per person in the two year preceding the filing of the bankruptcy case. Statement of Financial Affairs Question 13, Dckt. 1 at 47. If the \$10,800 a year contribution/donation is being made post-petition, it appears that such charity has only begun with this bankruptcy case being filed.

Multiple Bankruptcy Case Filings

This is not the Debtor's first, or even second, recent bankruptcy filing. Debtor has filed and had dismissed the following bankruptcy cases:

- A. 18-22707, Chapter 13 Case (same counsel as current case)
 - 1. Filed.....May 1, 2018
 - 2. Dismissed.....February 25, 2019
 - 3. Schedule I Tax Deductions.....(\$1,233.42)
 - 4. Monthly Income.....\$7,480.00
 - 5. Schedule J Charitable Contribution/Donations.....\$25
 - 6. Case dismissed due to Debtor's failure to prosecute the confirmation of a

Chapter 13 Plan.

- B. 14-20464, Chapter 7 Case (other counsel)
1. Filed.....January 17, 2014
 2. Discharge Entered.....July 25, 2014
 3. Schedule I Income.....\$9,427.00
 4. Income Tax Withheld.....(\$2,384)
 5. Schedule J Charitable Contributions/Donations.....\$0.00
- C. 13-36138, Chapter 13 Case (other counsel)
1. Filed.....September 5, 2012
 2. Dismissed.....April 23, 2013
 3. Schedule I Income.....\$8,634.00
 4. Income Tax Withheld/Est. Pmt....(\$2,122.00)
 5. Schedule J Charitable Contributions/Donations.....\$0.00
 6. Dismissed due to at least \$4,960 defaulted plan payments.
- D. 11-25701, Chapter 13 Case (other counsel)
1. Filed.....March 7, 2011
 2. Dismissed.....May 14, 2012
 3. Schedule I Income.....\$9,223
 4. Income Tax Withheld.....(\$2,041)
 5. Schedule J Charitable Contributions/Donations.....\$0.00
 6. Dismissed due to at least \$3,000 in defaulted plan payments.
- E. 10-25924, Chapter 13 Case (other counsel)
1. Filed.....March 10, 2010
 2. Dismissed.....November 19, 2010
 3. Schedule I Income.....\$7,385.00
 4. Income Taxes.....\$0.00
 5. Schedule J Charitable Contributions/Donations.....\$50

It appears that Debtor has lived in Chapter 13 for now more than a decade, Debtor's Chapter 13 cases stretching back to June of 2009, without actually being able to prosecute and perform a Chapter 13 plan.

Debtor also has a consistent history of paying \$0.00 or very little in charitable contributions or religious donations, but now purports to be paying more than \$10,000 a year. Debtor accounts for federal and state income taxes sometimes, and other times, as in the current case, purports to be exempt from paying any taxes.

This raises a very serious situation for Debtor. Making statements under penalty of perjury that are inaccurate has significant consequences. It is not, as Britney Spears would sign, “Oops, I did [misrepresentation under penalty of perjury] it again,” now I’ll just file yet another bankruptcy case.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor’s assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 6-2, the court determines the value of the secured claim to be \$**xxxx.xx**, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Michael Enos and Phyllis Enos (“Debtors”) (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is **xxxxxx**, and the claim of the Internal Revenue Service (“IRS” or “Creditor”) secured by an assets described in Debtors’ Schedule B (“Property”) is determined to be a secured claim in the amount of \$**xxxx.xx**, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

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 March 12, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

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

~~The Motion to Confirm the Modified Plan is confirmed.~~

Sharon Phelps ("Debtor") seeks confirmation of the Modified Plan because Debtor experienced a change in rental income due to complications with a tenant. Dckt. 63 (Declaration). The Modified Plan proposes monthly payments starting on April 25, 2019 of \$6,870.00 to address the missed payments. Dckt. 63 (Modified Plan). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 16, 2019. Dckt. 7. The Trustee notes that in Section 7.02 contains provisions that change how the Trustee makes disbursements under the current confirmed plan that will happen before the confirmation for the Modified Plan. The Trustee requests that modifications be made in the order confirming to address this issue. Additionally, the Trustee states that Debtor is currently delinquent \$435.00 under the proposed Plan.

DEBTOR REPLY:

Debtor's counsel responds that Debtor has cured the delinquency and Debtor agrees to included the requested modifications in the order confirming.

RULING:

~~————— 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 Sharon Phelps (“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 March 12, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Thru #15

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. The Plan requires 75 months to complete, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322 (d).

Trustee's objection is well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 75 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2019. 14 days' notice is required. That requirement was met.

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

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

Marsha Townsend and Robert Townsend ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's did not correctly notice Creditor because Debtor incorrectly listed Creditor's address as P.O. Box 876, Roseville, California instead of P.O. Box 875, Roseville, California.
- B. Creditor argues that the Plan does not provide for full payment of the claim. Creditor states that the note included a 10.75% interest rate and the plan only provides for a 4% interest rate with respect to Creditor's claim.
- C. Debtor's Plan does not appear to provide for all of Debtor's disposable income. Debtor's Schedule J reflects \$4,971.13 of disposable income while the Plan provides for monthly payments of \$3,875.00.

Creditor's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. The Plan requiring at least 68 months exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). 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 \$23,605.83 in pre-petition arrearages.

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 Federal National Association ("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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

Federal National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan requires at least 68 months to complete.
- B. Debtor's Plan only provides for \$4,000.00 of the \$11,288.57 of pre-petition arrears due and owing under Creditor's note.
- C. Debtor's Plan does not appear to provide for all of Debtor's disposable income. Debtor's Schedule J reflects \$4,971.13 of disposable income while the Plan provides for monthly payments of \$3,875.00.

Creditor's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. The Plan requiring at least 68 months exceeds

the maximum sixty months allowed under 11 U.S.C. § 1322(d). 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 \$11,288.57 in pre-petition arrearages.

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 Federal National Association ("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.

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2019. 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 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 xxxx.

Safe Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor lists a liability of a non-Debtor spouse or former spouse on his petition that relates to an asset that Debtor has not equitable interest. Creditor claims Debtor is attempting to modify the terms of the agreement entered into by the non-Debtor spouse or former spouse. Additionally, Creditor states that the non-Debtor, Kristina Boyd, also has a pending Chapter 13 case (Case No. 19-21066) where the debt is not being properly treated. Creditor further notes that both Debtors are represented by the same counsel.

DEBTOR'S RESPONSE:

Debtor's counsel asserts that the divorce proceed has not yet finalized and that Debtor is required to treat the debt as a community debt. Moreover, asserts that because there is less than 60 months due on the obligation Debtor is permitted to provide for the debt in Class 2.

Debtor cites California Community Property law for the proposition that "are presumed to be the responsibility of both spouses." This misstate the law. California Family Code §910 states (emphasis added):

§ 910. **Community estate liable** for debt of either spouse

(a) Except as otherwise expressly provided by statute, **the community estate is liable for a debt incurred by either spouse before or during marriage**, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) “During marriage” for purposes of this section does not include the period after the date of separation, as defined in Section 70, and before a judgment of dissolution of marriage or legal separation of the parties.

The law does not state that one spouse is personally liable for the debts of the other spouse, but merely that the “community estate” is liable. The term “community estate” is statutorily defined as follows:

§ 63. “Community estate”

“Community estate” includes both community property and quasi–community property.

Cal Fam Code § 63. Thus, while the obligation may be enforced against community property, it is not an obligation of the non-debtor (the one not personally obligated) spouse.

CREDITOR REPLY:

Creditor states that the obligation is not correctly provided for in the spouse or former spouses proceeding and reiterates that counsel is the same for both parties. Creditor, without any legal support, claims that the debt is not community property because the Debtor is estranged from the non-Debtor and does not have possession of the vehicle.

DISCUSSION:

The proposed Chapter 13 Plan provides for Creditor’s secured claim in Class 2 (A), reducing the interest rate and reamortizing the secured claim. If the vehicle is community property in this bankruptcy case, then there is a secured claim. If it is not community property that is included in this case, then it is not a secured claim.

At the hearing **XXXXXXXXXXXXXXXXXXXX**

The Plan **XXXXX** with 11 U.S.C. §§ 1322 and 1325(a). The Objection is **XXXXX** , and the Plan is **XXXXX** .

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 Safe Credit Union (“Creditor”) having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan **XXXXX** .

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. The Debtors are delinquent \$3,650.00 with another plan payment of \$3,650.00 due prior to the hearing. Debtors' have paid \$0.00 into the plan.

Trustee's objections are well-taken. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing the Trustee reported that Debtor had not cured the default. The Parties requested a briefing schedule with an Opposition filed by April 12, 2019 and a Replies, if necessary on or before April 19, 2019.

Upon the court's review of the docket on April 23, 2019, no Opposition has been filed.

At the hearing -----

Absent evidence that the Debtors have cured the delinquency, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

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

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

18. [18-25178](#)-C-13 FRANK DAVIS

[PGM](#)-4 Peter Macaluso

POST-CLOSING STATUS
CONFERENCE
RE: MOTION TO SELL
1-13-19 [\[96\]](#)

No Tentative Issued.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Amended Plan is denied.

Valaree Jade St. Mary ("Debtor") seeks confirmation of the Amended Plan. Dckt. 98 (Declaration). The Amended Plan proposes monthly payments of \$135.00 per month for the remainder of the (60) month plan and provides for a 0% dividend to general unsecured creditors. 95 Dckt. (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 1, 2019. Dckt. 100. Debtor is delinquent \$135.00 in plan payments.

RULING:

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by Valaree Jade St. Mary (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2019. By the court's calculation, 21 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.

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

- A. Debtor and Debtor's non-filing spouse each own and operate a business. The Trustee asserts that Debtor has not provided required business documents to allow the Trustee to determine the accuracy and reasonableness of the business income expenses.
- B. Debtor does not appear to be able to make the payments based on the filed Schedules I and J. Debtor has not provided a Business Budget or a break down of the business expenses. Additionally, the Trustee states that based on statements made at the Meeting of Creditors a \$500 expenses for child support is actually a source of income. The Schedules have not been correct.
- C. Debtor's plan does not pay the general unsecured creditors what they would receive in

hypothetical Chapter 7.

Trustee's objections are well-taken. Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment. Additionally, Debtor has supplied insufficient information relating to the assets to assist Trustee in determining the value of the assets. Debtor fails to report information pertaining to a rental property and interest in non-Debtor's business.

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

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

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

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

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

Thru #22

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2018. 14 days' notice is required. That requirement was met.

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

**The Motion for Waiver of the Certification Requirements Of Entry of Discharge
is **XXXXX**.**

The Motion for Waiver of the Certification Requirements for Entry of Discharge has been filed by Sean Conrad ("Debtor"). On May 31, 2018, Joint-Debtor, Ann Conrad died. Dckt. 98, Death Certificate. 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. Here, Debtor Sean Conrad states that he is able to continue with the administration of the case and requests that court permit him to do so pursuant to Fed. R. Bankr. P. 1016. Debtor asserts that all required Plan payments have been made and cause exists to allow him to complete his plan and obtain his discharge. Dckt. 97.

TRUSTEE'S RESPONSE:

The Trustee notes that the plan completed with the payment received on November 20, 2018. The Trustee states that there is insufficient information provided to inform how the surviving Debtor was able to afford the plan payments for the final 6 months of the plan without the income and SSI contributions totaling \$2,008.00 per month prior to her death. The Trustee responds by claiming that Debtor's Motion does not provide information regarding any life insurance that may have been received due to the death of Debtor Lisa Conrad.

The Trustee notes that the Final Report and Account has not been filed as not all disbursement checks have cleared the Trustee's records. The Trustee also flags for the court that the names of non-debtors appear to be improperly included in documents 95 and 97. The Trustee states that this appears to be inadvertent.

The January 29, 2019 hearing was continued and supplemental pleading were required to be filed and served by February 19, 2019. Upon the court's review of the docket on February 28, 2019, no supplemental pleadings were filed with the court. The hearing was again continued at the March 5, 2019 hearing.

The court notes that while no supplemental briefing was filed in connection with this Motion, the surviving Debtor filed a Notice of Death and Motion to Appoint Sean Conrad as Successor to Lisa Conrad. Dckt. 108. The court also notes that in the Trustee's Response, the surviving Debtor has still not made any sworn statement

At the hearing -----.

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

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

The Motion for Waiver of the Certification Requirements for Entry of Discharge filed by Sean Conrad ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Appoint Sean Conrad as Successor to Lisa Conrad is XXXXX.

On March 21, 2019, Debtor Sean Conrad filed a Notice of Death of Lisa Conrad and Motion to Appoint Sean Conrad as Successor to Lisa Conrad pursuant Federal Rule of Civil Procedure 25(a), as incorporated under Federal Rules of Bankruptcy 7025. Debtor provided evidence that Debtor Lisa Ann Conrad died on May 21, 2018. Dckt. 111, Exhibit A. Movant, Debtor Sean Conrad, seeks to be substituted in place of Lisa Conrad for the purposes of completed the 11 U.S.C. § 1328 and § 522 certificates. Debtor states that all required payments under their confirmed plan have been made and that further of administration of the case should be permitted.

On April 12, 2019, the Chapter 13 Trustee filed a response indicating that the Trustee has still not received sufficient information to determine whether there were any life insurance proceeds that may have been received. Dckt. 114. The Trustee notes for the court that plan payments were met and check disbursement have cleared. However, the Trustee has not filed the Trustee's Final Report and Account and is waiting for the resolution of this and Debtor's Motion for Waiver of Certification Requirements (Dckt. 95) to be resolved.

At the hearing -----

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

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

The Motion for Waiver of the Certification Requirements for Entry of Discharge filed by Sean Conrad (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 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 March 18, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

Ramona Garcia ("Debtor") seeks confirmation of the Amended Plan. Dckt. 17 (Declaration). The Amended Plan proposes a 60 month plan with \$1,640.00 monthly payments that provides for a 0% dividend to general unsecured creditors. Dckt. 18 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on March 20, 2019. Dckt. 21. The Trustee opposes confirmation based on the following:

A. The Motion was filed prematurely. The Motion for confirmation was filed (12) days after the order for relief and prior to a Meeting of Creditors being set.

B. Debtor's Plan relies on family contributions but not evidentiary support has been provided to support the feasibility of the contributions.

C. The Debtor's additional provision are non-standard and the Trustee is not certain they comply with applicable law.

D. The Debtors have not yet attended a Meeting of Creditors.

The Trustee requests that either the Motion be denied or the hearing continued to allow for the Meeting of Creditors to take place.

RULING:

The Additional Provision is one to provide adequate protection payments to a creditor on its claimed secured by Debtor's residence while the Debtor pursues a loan modification. Such provisions cannot modify the secured claim, without the creditor's consent.

The Additional Provision appears to track the standard "Ensminger Provision" in this District - to a point. The Plan seeks to impose additional bankruptcy obligations, attempting to graft California Civil Code § 2923 into the Plan.

At the hearing ----.

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

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

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

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

~~_____IT IS ORDERED that the Motion is denied, and the Amended Plan is not confirmed.~~

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 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 March 15, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

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

Kevin Medley ("Debtor") seeks confirmation of the Amended Plan because Debtor incurred unanticipated vehicle repair costs. Dckt. 67 (Declaration). The Amended Plan proposes a 42 month plan that provides for a 0% dividend to general unsecured creditors. Dckt. 68 (Amended Plan). 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on April 3, 2019. Dckt. 72. The Trustee states that Debtor is \$345.00 delinquent in plan payments with another payment due prior to the hearing.

DEBTOR'S REPLY:

Debtor's counsel filed a Reply on April 22, 2019 stating that Debtor has cured the delinquency. Dckt. 75.

RULING:

At the hearing ----.

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

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by Kevin Medley (“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 March 15, 201x, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Thru #27

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 Debtors (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

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

- A. Debtors have filed an unpopulated plan. Moreover the unpopulated form is incorrect plan form for this district.
- B. Debtors did not appear at the April 4, 2019 Meeting Creditors. The Meeting has been continued to June 6, 2019.

The Trustee's objections are well-taken. The court notes that Debtors' proposed plan does not provide for any debts as Debtors have filed a blank plan form. The court further notes that Debtors are not using the proper plan for Eastern District of California.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick, (“Trustee”) 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 Debtors (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2019. 14 days' notice is required. That requirement was met.

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

The Objection to Confirmation of Plan is sustained.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006-AR8 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not properly provide for its secured claim.

Creditor's objections are well-taken. The court notes that Debtors' proposed plan does not provide for any debts as Debtors have filed a blank plan form. The court further notes that Debtors are not using the proper plan for Eastern District of California.

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 NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006 (“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.

27. [19-21094-C-13](#) **RICKY HICKMAN AND CARMEN** **OBJECTION TO CONFIRMATION OF**
[RAS-1](#) **MARIN** **PLAN BY DEUTSCHE BANK**
NATIONAL
Pro Se **TRUST COMPANY**
4-4-19 [22]

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

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 Debtors (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2019. By the court's calculation, 26 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.

Deutsche Bank National Trust Company, as Trustee for GSAA Home Equity Trust 2006-S1, Mortgage Pass-Through Certificates, Series 2006-S1, by and through its authorized loan servicing agent, Ocwen Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan does not properly provide for its secured claim.

Creditor's objections are well-taken. The court notes that Debtors' proposed plan does not provide for any debts as Debtors have filed a blank plan form. The court further notes that Debtors are not using the proper plan for Eastern District of California.

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 Deutsche Bank National Trust Company, as Trustee for GSAA Home Equity Trust 2006-S1, Mortgage Pass-Through Certificates, Series 2006-S1, by and through its authorized loan servicing agent, Ocwen Loan Servicing, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

28. [19-20999](#)-C-13 CRAIG/JADE UHRMACHER MOTION TO CONFIRM PLAN
[MMP-1](#) Michele Poteracke 3-30-19 [[15](#)]

No appearance necessary as an Amended Notice of Hearing (Dckt. 23) has set this hearing for June 4, 2019.

Final Ruling: No appearance at the April 30, 2019 hearing is required.

The Objection to Claim of Exemptions is dismissed without prejudice.

The Chapter 13 Trustee, David Cusick (the “Trustee”), an Ex Parte Motion to Dismiss the pending Objection on April 15, 2019, Dckt. 175; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection 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 Kenneth Alberts and Monica Alberts (“Debtors”); **the Ex Parte Motion is granted, the Trustee’s Objection is dismissed without prejudice, the court removes this Objection from the calendar.**

Thru #31

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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.

<p>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plans on April 15, 2019 and April 25, 2019. Dckts. 31; 31. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plans on April 15, 2019 and April 25, 2019. Dckts. 31; 31. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the April 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm. Dckts. 34; 37. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

Final Ruling: No appearance at the April 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). That requirement was met.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. Raul Navarro and Maria Navarro ("Debtors") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on April 16, 2019. Dckt. 66. 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 Raul Navarro and Maria Navarro ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 16, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. [19-21102](#)-C-13
[DPC-1](#)

ALEJANDRO MARTINEZ
Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-3-19 [\[25\]](#)

Final Ruling: No appearance at the April 30, 2019 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2019, 201x. By the court's calculation, 27 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.

The Objection to Confirmation is overruled as moot.

The Chapter 13 Trustee, David Cusick (the "Trustee"), objects to confirmation of Alejandro Martinez's ("Debtor") Chapter 13 plan. However, on April 24, 2019 the court sustained an Order to Show Cause based on Debtor's failure to pay the required filing fees and dismissed this proceeding. Dckt. 30. Accordingly, the Trustee's Objection is moot.

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

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

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

IT IS ORDERED that the Objection is overruled as moot.

Final Ruling: No appearance at the April 30, 2019 hearing required.

Local Rule 9014-1(f)(2) Objection— No Hearing Required, Non-Opposition Filed by Debtor.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2019. By the court's calculation, 22 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.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtors list Golden 1 Credit Union's claim secured by a vehicle as a Class 4 claim. However, the Trustee notes that Debtors admitted that the vehicle was totaled in an accident on March 25, 2019. The Trustee is not certain if the claim treatment is correct.
- B. Debtors' Schedules I and J reflect that Debtors' ability to pay is \$11,076.00 per month. However, Debtors' plan only proposes to pay \$6,550.00 per month. Moreover, the plan does not propose to pay interest to the unsecured creditors. Accordingly, the Trustee asserts that Debtors' plan does not comply with 11 U.S.C. § 1325(a)(4)

Trustee's objections are well-taken. Upon review of the Debtors' Schedules the court notes that Schedule I reflects monthly income of \$15,466.00 and Schedule J reflects monthly expenses of \$4,390.00. Accordingly, Debtors' petition indicates there is \$11,076.00 in monthly disposable income. However, the Plan only provides for monthly payments of \$6,550.00. Debtors's Plan does not provide for all disposable income to be paid into the Plan. 11 U.S.C. § 1325(a)(4).

On April 26, 2019, Debtor's filed a statement of Non-Opposition and stated that they will file an Amended Plan.

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

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

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

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

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

Final Ruling: No appearance at the April 30, 2019 hearing is required.

The Chapter 13 Trustee, David Cusick (the “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 March 1, 2019, is confirmed.**

Counsel for Mario Lopez and Alicia Lopez (“Debtors”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.
