

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 3, 2017 at 2:00 p.m.

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1.	<a href="#"><u>16-26005</u></a> -C-13	GREGORY BOYD	MOTION TO MODIFY PLAN
	<a href="#"><u>SJD</u></a> -3	Susan Dodds	9-1-17 <a href="#"><u>[74]</u></a>

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2017. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 Chapter 13  
Plan filed by the Debtors having been presented to

the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on September 1, 2017 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 31, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Citibank, N.A., objects to confirmation on the basis that debtor's plan proposed to cure arrearages owed to Citibank, N.A. in the amount of \$52,000.00, however the true amount of arrearages owed to Citibank, N.A. is \$54,384.48.

#### **Debtor's Response**

Debtor responds that creditor objection is warranted, and debtor proposes the same plan payment, but apparently allocates some funds from what would be used to pay unsecured creditors to pay the additional amount of arrearages owed to Citibank, N.A.

The Plan, as written, does not comply with 11 U.S.C. §§ 1322 and 1325(a). However, the court notes that the amount to be disbursed to unsecured creditors after changing the distribution scheme to fully repay the arrears owed to Citibank, N.A. is enough to satisfy the best interests of creditors test. The objection is overruled and the Plan is confirmed so long as the debtor fixes the language in the plan to match the new payment distribution

scheme.

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 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 is overruled, Debtor's Chapter 13 Plan filed on July 31, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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3. [17-24708](#)-C-13 MARIA HERRERA  
[DPC](#)-1 Timothy Walsh

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
8-17-17 [[27](#)]

Thru #4

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 17, 2017. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Objection to Discharge is sustained.**

Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on August 17, 2017. Dckt. 27.

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

The Debtor filed a Chapter 13 bankruptcy case on August 30, 2016. Case No. 16-25749. The case was converted to a chapter 7 on January 17, 2017. The Debtor received a discharge on April 28, 2017.

The instant case was filed under Chapter 13 on July 18, 2017.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on December 30, 2015, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 17-24708), the case shall be closed without the entry of

a discharge and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 17-24708, the case shall be closed without the entry of a discharge.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtor is delinquent in plan payments in the amount of \$1,490.00. Debtor has paid \$0 into the plan to date.

B. Debtor's prior filed case remains open and has pending motions scheduled for hearing before Judge McManus.

C. Debtor's plan includes payments to Carrington Mortgage, however, the property Carrington Mortgage is secured by is subject to potential sale and debtor may not have rights to possession of the property.

D. Trustee objects to the no look attorney's fee and requests that counsel be required to file a Motion for additional fees and costs.

E. Debtor provided the Trustee with a checklist indicating that payments to Carrington Mortgage are \$915.07 per month, however the plan proposes to pay just \$887.60 to Carrington per month.

F. Plan is not signed by debtor or counsel.

G. Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.

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

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

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

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

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

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5. [17-25610](#)-C-13 MEGAN ELLIOTT  
[MRL](#)-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF  
SCHOOLS FINANCIAL CREDIT UNION  
8-28-17 [[9](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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The Chapter 13 Debtor having filed a "Withdrawal of Motion" for the pending Motion to Value Collateral, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 for the court to dismiss without prejudice the Motion to Value Collateral, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Debtor's Motion to Value Collateral.**

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.

A Motion to Value Collateral having been filed by the Chapter 13 Debtor, the Chapter 13 Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Value Collateral is dismissed without prejudice.

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6. [17-24817](#)-C-13 RAMON SANCHEZ AND MARIA OBJECTION TO CONFIRMATION OF  
[AP-1](#) RAMOS PLAN BY BANK OF AMERICA, N.A.  
Thomas Gillis 9-7-17 [[22](#)]

Thru #7

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 7, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor opposes confirmation on the basis that debtor's plan fails to properly cure pre-petition arrears. Debtor has filed a non-opposition to the motion.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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7. [17-24817](#)-C-13 RAMON SANCHEZ AND MARIA OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 RAMOS PLAN BY DAVID P. CUSICK  
Thomas Gillis 9-6-17 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtors' plan may not be debtors' best efforts.

B. Debtors' plan does not contemplate sufficient payment to Class 1 creditor Bank of America Mortgage.

Debtor filed a non-opposition to the motion.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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8. [17-24624](#)-C-13 GLADYS PETTY  
[DPC](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-29-17 [[28](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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Thru #10

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. The plan relies upon the Motion to Value (see matter #10). The court notes that there is no opposition to the Motion to Value.

B. Debtor's Schedule I lists gross wages as \$5,638.35 per month. However, debtor's actual gross wages averaged over the past 6 months are \$4,846.22 per month. Therefore, debtor does not appear able to make plan payments.

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

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

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

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

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

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10. [17-24925](#)-C-13 DEO BUENAFLO  
[PGM](#)-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
FLAGSHIP CREDIT ACCEPTANCE, LLC  
8-30-17 [[19](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 30, 2017. Twenty-eight days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Value secured claim of Flagship Credit Acceptance, LLC, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Nissan Altima. The Debtor seeks to value the property at a replacement value of \$6,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2014, more than 910 days prior to the filing of the petition, with a balance of approximately \$15,987.34. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,000.00. 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 for Valuation of  
Collateral filed by 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 Flagship Credit Acceptance, LLC. secured by a purchase-money loan secured against the Debtor's 2013 Nissan Altima, is determined to be a secured claim in the amount of \$6,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$3,413.00. Debtor has paid \$5,506.00 into the plan to date.

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

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

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

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

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

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Modified Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in the amount of \$1,271.00 under the terms of the proposed plan.

B. The proposed plan no longer provides for Paradise Pine Property Owners Assoc. which was listed as a class 2 secured non-purchase money security interest under the confirmed plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel,

and good cause appearing,

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

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. The amended plan does not appear to be properly signed by the debtor. The plan appears to have a total of 8 pages filed rather than 7 and page 8 appears to have been uploaded erroneously. Trustee requests that the attorney produce the originally signed document for review.

Trustee filed a status report on 9/26/17 indicating that the Trustee received the signature page of a plan numbered "Page 5 of 6." It does not appear to be the same plan filed August 23, 2017. The additional provision box is now marked as "are not" appended to the plan, thus removing the Trustee's ability to disburse attorneys fees. The plan also does not contain a monthly dividend, rather it refers to the additional provisions, but no additional provisions exist.

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

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

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

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

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

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14. [17-20437](#)-C-13 LOIDA/MELQUIDES  
[DPC](#)-2 BALLESTEROS  
Chinonye Ugorji

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
8-24-17 [[93](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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**Local Rule 9014-1(f) (1)** - No opposition filed: The Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 24, 2017. Twenty eight days' notice is required. That requirement is met.

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

Chapter 13 Trustee opposes Debtor's exemptions the basis that:

A. Debtors have mixed both CCP § 703.140 and CCP § 704 in their exemptions.

All exemptions claimed must be disallowed without prejudice and the debtor should file an amended Schedule C with proper exemptions.

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 Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Exemptions is sustained.

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15. [17-22440](#)-C-13 AMADO BARAJAS AND AURORA MOTION TO CONFIRM PLAN  
[TOG](#)-1 CARRILLO 8-14-17 [[41](#)]  
Thomas Gillis

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$300.00. Debtors have paid \$4,900.00 into the plan to date.

B. It does not appear that Jose Gallarado (Class 6) qualifies as a co-signed debt. Gallarado should be in Class 7 rather than Class 6.

Debtor filed a non-opposition to the Trustee's objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 7, 2017. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<b>The Motion to Value secured claim of Schools Financial Credit Union, "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2014 Buick Lacrosse. The Debtor seeks to value the property at a replacement value of \$17,886.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$20,111.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$17,886.00. 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 Trustee notes that the Creditor has not filed a proof of claim. However, the basis for the bifurcation of the Creditor's claim is not based solely on the fact that the Creditor has not filed a proof of claim. Therefore, the lien can still be bifurcated.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by a purchase-money loan secured against the Debtor's 2014 Buick Lacrosse, is determined to be a secured claim in the amount of \$17,886.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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17. [15-23846](#)-C-13 JAMES BARRY  
[EJS](#)-3 Eric Schwab

MOTION TO AVOID LIEN OF  
NORTHERN CA COLLECTION SERVICE,  
INC.  
8-28-17 [[61](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 28, 2017. 28 days' notice is required. That requirement is met.

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

**The Motion to Avoid Judicial Lien is denied.**

A judgment was entered against the Debtor in favor Northern Video Systems, Inc., A California Corporation for the sum of \$8,625.00. The abstract of judgment was recorded with Shasta County on May 12, 2006. That lien attached to the Debtor's residential real property commonly known as 8561 Oak Terrance Lane, Millville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$205,000.00 as of the date of the petition. The unavoidable consensual liens total \$251,120.88 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. Using the debtor's valuation, after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien.

**Trustee's Response**

However, the Trustee filed a response questioning the debtor's valuation

of the property. To support his contention, the debtor filed a report from Zillow from 2005 showing the "Zestimate" to be \$203,784.00. The Trustee states that it appears the debtor pays \$4,100.86 in property taxes per year, indicating that the assessed value is at least \$410,008.60. Additionally, the Trustee has found a recorded sale price of \$540,000 on August 7, 2004. County tax records reflect that the property is currently assessed for \$100,000 for land and \$360,000 for structures for a \$453,000 assessed value.

The court notes the Trustee's concerns and will deny the Motion without prejudice. The debtor generally can attest to valuation of property, however, in light of the Trustee's concerns and research, the court requests additional information regarding valuation before granting a motion to avoid a judicial lien.

#### **ISSUANCE OF A MINUTE ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Avoid Lien is DENIED without prejudice.

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**Final Ruling: No appearance at the October 3, 2017 hearing is required.**  
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Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's counsel, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 18, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 9-1 of LVNV Funding, LLC is sustained and the claim is disallowed in its entirety.**

Roland Lee Phillips and Elaine Stella Phillips, the Chapter 13 debtors ("Objector") request that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$292.47. Objector asserts that the last payment on the account was made on January 22, 2004 which is more than four years prior to the filing of this petition. The Statute of Limitations for commencing collection actions on debts of this type is four years pursuant to CCCP § 337.

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).

Based on the evidence before the court, the creditor's claim is

disallowed in its entirety as it is barred from collection by the California Statute of Limitations. 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 LVNV Funding, LLC, Creditor filed in this case by Chapter 13 debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 9-1 of LVNV Funding, LLC, is sustained and the claim is disallowed in its entirety.

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 9, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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Thru #21

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 31, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Deutsche Bank, N.A., opposes confirmation because the plan was not filed in good faith, it fails to properly provide for the creditor's claim, and is not feasible.

The debtor has filed a blank plan, failed to attend the meeting of creditors, proposes a plan payment that is not in accordance with his net disposable income, failed to provide the trustee with documents, does not list any debts on Schedules D or E/F. Debtor's plan fails liquidation analysis, is incomplete, and does not properly provide for the secured creditor's claim.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

- A. Debtor failed to attend meeting of creditors.
- B. Debtor is delinquent in plan payments in the amount of \$100.00.
- C. Debtor's plan is blank and does not provide for any claims in Classes 1 through 6 and lists no dividend to general unsecured creditors.
- D. Debtor's plan fails the liquidation analysis as debtor's non-exempt equity totals \$195,150.00.
- E. Debtor's schedules fail to list any liabilities on Schedules D or E/F and provides for no claims in the plan.
- F. Debtor lists negative disposable income but proposes a plan payment of

\$100.00.

G. Debtor has not filed a pre-bankruptcy credit counseling certificate.

H. Debtors failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

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

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

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

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

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

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Thru #23

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 7, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Bank of America, N.A., objects to confirmation on the basis that the plan does not propose to cure the pre-petition arrears in the amount of \$1,869.92. Creditor has filed a proof of claim 6-1 to support this contention.

#### **Debtor's Response**

Debtor responds that there cannot be arrears as debtor has made payment on the loan timely each month and in the full amount. Debtor submitted exhibits showing receipts for payments made to the creditor. Debtor argues that the proof of claim supports debtor's contention that there are no arrears owed to the creditor.

However, the court notes that the proof of claim shows the debtor making payments on the monthly payment, but fees and charges accruing. The debtor has not objected to the proof of claim. The proof of claim has prima

facie validity absent objection by the debtor. As a result, the plan does not provide for the creditor's pre-petition arrears and cannot be confirmed.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 7, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Bank of America, N.A., objects to confirmation on the basis that debtor's plan fails to properly cure the creditor's pre-petition arrears. The creditor asserts that pre-petition arrears total \$25,910.22 whereas the plan provides for the cure of \$23,125.00 in arrears.

#### **Debtor's Response**

Debtor responds that creditor's accounting is wrong and cites the bank's previous proof of claim is a previous case filed by the debtor, along with the missed payments in conjunction with that chapter 13 case, to assert that the arrears are just \$23,155.00.

The creditor filed proof of claim 4-1 indicating that the arrears are \$25,910.22. The debtor has not objected to the proof of claim. The proof of claim has prima facie validity absent objection by the debtor. As a result, the plan does not provide for the creditor's pre-petition arrears and cannot be confirmed.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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Thru #25

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required. That requirement is met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Trustee has been unable to fully assess the feasibility of the plan and has continued the meeting of creditors to September 21, 2017. The court notes that the meeting was concluded as to the debtor at the meeting of creditors held September 21, 2017.

B. Debtor is delinquent in plan payments in the amount of \$376.06. Debtor has paid \$360.00 into the plan to date.

C. Debtors may have additional income that has not been reported. Debtors' Schedule J lists \$400 as debtor's rental expenses for separate living, however Household 2 on a separate attachment also includes a \$400 rent expense and other expenses for a total of \$650 per month. Debtors additionally have a history of large tax returns but do not propose to pay to the Trustee all tax refunds exceeding a combined total of \$2,000 received during the life of the

plan.

D. Debtors' plan fails liquidation analysis as debtors' non-exempt equity totals \$1,830.00 and debtors are proposing a 0% dividend to unsecured creditors.

E. Plan does not propose to pay all priority claims as it fails to provide for priority tax claim of Franchise Tax Board in the amount of \$402.09.

F. Trustee lists a number of inaccuracies in debtors' schedules.

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

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

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

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

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

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**Tentative Ruling:** The Objection to Debtor's Claim of Exemptions was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to Debtor's Claim of Exemptions was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

Chapter 13 Trustee opposes Debtor's exemptions the basis that:

- A. Debtors claim exemptions under both CCCP § 703.140 and CCCP § 704.
- B. Debtors claim interest in a 2005 Chevy F250 in the amount of \$8,000.00 however § 704.060 only allows exemption up to \$4,850.00 for a business vehicle.
- C. Debtors attempt to exempt monies in two bank accounts, however § 704.070 only allows debtors to exempt up to 75% of wages earned in the 30 days prior to filing.

Debtor responds stating that they will file an amended Schedule C prior to the hearing. The court notes that no amended Schedule C has been filed. As a result, the objection will be 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 Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Exemptions is sustained.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$1,540.00. Debtor has paid \$4,620.00 into the plan to date.

B. Trustee received a tax return from debtor that indicated that the debtor has a spouse. No spouse was listed on debtor's schedules and debtor exempted equity in his property pursuant to CCCP § 703.140. If debtor was married at time of filing he would have needed to file a spousal waiver for use of the exemption.

C. Debtor's Schedule I does not seem to match debtor's declaration which indicates that he receives \$1,200.00 per month from his son and \$4,700.00 per month from his nephew for rent.

D. Debtor proposes to pay an adequate protection payment to Wells Fargo Home Mortgage however the amount proposed to pay is less than the interest accrual alone.

E. The plan proposes to modify the mortgage, however the debtor has failed to provide the Trustee with proof of any pending loan modification.

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

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

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

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

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

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Thru #29

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtor is delinquent in plan payments in the amount of \$3,000.00. Debtor has paid \$0 into the plan to date.

B. Credit Acceptance filed Claim 1 indicating security in a 2017 Jeep Cherokee purchased 28 days prior to the filing of the case. Debtor fails to list an interest in the vehicle and does not list a debt on the vehicle.

C. Debtor does not properly account for the number of people living in the household.

D. Debtor admitted at the meeting of creditors to having additional expenses for the 2017 jeep.

E. The Trustee received a bank statement that shows several withdrawals at local Indian casinos in the range of several thousand dollars per month.

F. Debtor deducts \$1,324.00 per month for repayment of retirement loans, however, it appears debtor pays approximately \$833.48 per month toward such loans.

G. Debtor's pay stubs indicate she is bringing home almost \$8,000 more per month than reported on Schedule I.

H. Debtor's plan fails liquidation analysis.

I. The plan will exceed 60 months.

J. Debtor did not report her prior chapter 13 cases.

K. Debtor may have made payments to a debt consolidation company.

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

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

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

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

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

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28. [17-24763](#)-C-13 ANGELINA VILLON  
[DPC](#)-2 Mark Wolff

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
8-29-17 [[25](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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**Local Rule 9014-1(f) (1)** - No opposition filed: The Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Twenty eight days' notice is required. That requirement is met.

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

Chapter 13 Trustee opposes Debtor's exemptions the basis that:

A. Debtor is married and has not included her spouse in the bankruptcy. Debtor failed to file a spousal waiver for use of the California State Exemptions under CCCP § 703.140, therefore debtor is not entitled to use of the exemptions claimed on Schedule C.

The court agrees with the Trustee's concerns, without a spousal waiver the debtor cannot claim § 703.140 on real property.

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 Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Exemptions is sustained.

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29. [17-24763](#)-C-13 ANGELINA VILLON  
[JHW](#)-1 Mark Wolff

OBJECTION TO CONFIRMATION OF  
PLAN BY CREDIT ACCEPTANCE  
CORPORATION  
8-24-17 [[16](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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The Creditor, Credit Acceptance Corporation, having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Creditor's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Creditor, the Creditor having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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30. [17-20570](#)-C-13 JAVIER CASTRO AND SILVIA OBJECTION TO NOTICE OF  
[SDH](#)-1 RECENDEZ POSTPETITION MORTGAGE FEES,  
Scott Hughes EXPENSES, AND CHARGES  
8-8-17 [[22](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 8, 2017. Twenty-eight days' notice is required.

The Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor objects to a Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Wells Fargo Bank, N.A. on August 2, 2017. The claim is for \$1,650.00 for "attorneys fees: plan review," "bankruptcy/proof claim fees," and "objection to confirmation."

Debtor objects to the \$500 fee for objection to confirmation because the bank filed an objection to confirmation after the deadline for filing such motion, and such motion was not heard as it was untimely. As a result, debtor argues that they should not be forced to pay for a hearing that never happened, or a motion that was filed untimely.

Debtor objects to the \$750 fee for filing a proof of claim as unreasonable and excessive. Furthermore the fee was not approved by the court.

Debtor objects to the \$400 fee for "plan review" as excessive.

The court notes that there is no opposition to the motion. Debtor has shifted the burden to the creditor to prove such fees are reasonable. In the absence of such evidence, the court will sustain the objection.

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 Notice of Mortgage Payment 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 Notice of Postpetition Mortgage Fees, Expenses, and Charges is sustained and the fees are disallowed in their entirety.

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31. [17-24770](#)-C-13 DEANDRA JACKSON  
[DPC](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-29-17 [[32](#)]

Thru #32

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtor is delinquent in plan payments in the amount of \$245.00. Debtor has paid \$0 into the plan to date.

B. Claim #3 reflects that debtor is "proprietor of I Cook." Debtor has not adequately disclosed this business interest on Schedule I, Schedule B, or the Statement of Financial Affairs.

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

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

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

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

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

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32. [17-24770](#)-C-13 DEANDRA JACKSON  
[PGM](#)-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF  
CONSUMER PORTFOLIO SERVICES,  
INC.  
8-25-17 [[27](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 25, 2017. Twenty-eight days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Value secured claim of Consumer Portfolio Services, Inc., "Creditor," is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2011 Chrysler 200. The Debtor seeks to value the property at a replacement value of \$4,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2013, more than 910 days prior to the filing of the petition, with a balance of approximately \$13,389.48. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$4,500.00. 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 Trustee notes that the Creditor has not filed a proof of claim. However, the basis for the bifurcation of the Creditor's claim is not based solely on the fact that the Creditor has not filed a proof of claim. Therefore, the lien can still be bifurcated.

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

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

The Motion for Valuation of Collateral filed by 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 Consumer Portfolio Services, Inc. secured by a purchase-money loan secured against the Debtor's 2011 Chrysler 200, is determined to be a secured claim in the amount of \$4,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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**Final Ruling:** No appearance at the September 6, 2017 hearing is required.  
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The Chapter 13 Debtors having filed a "Withdrawal of Motion" for the pending Motion to Modify Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Debtors' Motion to Modify.**

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.

A Motion to Modify having been filed by the Chapter 13 Debtors, the Chapter 13 Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

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34. [16-27971](#)-C-13 ROMULO/ANTOINETTE JIMENEZ OBJECTION TO CLAIM OF STATE  
[MJD](#)-2 Matthew DeCaminada FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, CLAIM NUMBER  
21  
8-14-17 [[36](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
-----

The Chapter 13 Debtors having filed a "Withdrawal of Motion" for the pending Objection to Claim, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Claim, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Debtors' Objection to Claim.**

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

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

An Objection to Claim having been filed by the Chapter 13 Debtors, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Claim is dismissed without prejudice.

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Thru #36

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to grant the Motion to Confirm the Modified Plan.**

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$11.00 Debtor has paid \$23,720.00 into the plan to date.

B. The plan states that \$2,987.50 have been paid to the debtor's attorney prior to the filing of the case, however the prior order approving fees provided only \$2,650.00 was paid prior.

**Debtor's Reply**

Debtor filed a late reply. Debtor indicated that the mistakes have been cured. First, the debtor sent \$11 to the Trustee to cure the delinquency. Second, the attorney's fees have been corrected and an Amended Rights and Responsibilities and an Amended Disclosure of Compensation of Attorney for Debtor have been filed.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed with all changes to be made on the order confirming.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 Plan is granted, Debtor's Chapter 13 Plan filed on August 3, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 15, 2017. Fourteen days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The motion seeks permission to purchase a 2013 Mercedes-Benz, which the total purchase price is \$23,476.44, with monthly payments of \$547.01 for 71 months.

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).

**Trustee's Opposition**

The Trustee opposes the motion on the basis that:

- A. The interest rate is 18.6% and may not be commercially reasonable.
- B. Debtor has indicated a significant increase in income in one month since first schedules were filed.
- C. Debtor is delinquent under the terms of the confirmed plan in the amount of \$57,600.00. The debtor has filed a motion to modify plan.

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

Debtor filed a reply indicating that the debtor has no vehicle to get to work. Due to the bankruptcy and poor credit score, most dealers are unwilling to provide her with a copy of a proposed purchase agreement in order to obtain approval by the court. Debtor asserts that other dealers had even higher interest rates, although the only evidence of that is debtor's testimony in her declaration.

Debtor's increase in income occurred as debtor has agreed to teach more classes. Debtor's chapter 13 payments were sporadic due to the death of debtor's daughter and the added responsibility of her granddaughter. Those issues will not be a problem going forward.

#### **Discussion**

Due to the debtor's increase in income and the requirement of having a car to work, the court finds that the loan, while containing a high interest rate, is reasonable.

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

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

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

**IT IS ORDERED** that the Motion is granted and Boatamo Mosupyoe, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 138.

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37. [17-25080](#)-C-13 ANGELIA HORTON  
[DPC](#)-1 Seth Hanson

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-6-17 [[16](#)]

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Objection to Confirmation of Plan, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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38. [17-22987](#)-C-13 BECKY/MICHAEL ENSLEY  
[MET](#)-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
AMERICAN HONDA FINANCE  
CORPORATION  
9-10-17 [[57](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 10, 2017. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Motion to Value will be set for evidentiary hearing.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Honda Pilot. The Debtor seeks to value the property at a replacement value of \$16,371.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2013, more than 910 days prior to the filing of the petition, with a balance of approximately \$20,878.00.

#### **Creditor's Opposition**

Creditor filed an opposition asserting that the value of the property is \$23,691.00 according to Kelly Blue Book.

## **Discussion**

The court notes that a genuine dispute over a material fact. As a result, an evidentiary hearing will be set.

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

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

The Motion for Valuation of Collateral filed by 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 will be set for evidentiary hearing.

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Thru #42

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 31, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Farm Credit West, FLCA, objects to confirmation on the basis that (a) the plan does not propose to pay the arrears owed to Creditor in the amount of \$62,412.43 over the life of the plan, (b) the plan proposes to spread out the payment of an annual disbursement as a payment each month, (c) the plan is not feasible as the actual amounts debtor has received as business income does not match with the projected amounts debtor has forecasted

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The creditor's arrears are not being paid back over the life of the 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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 30, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

The Creditor, Jay Bolton, has filed a proof of claim in the amount of \$532,274.81 secured on property of the debtor. Debtor has not objected to such proof of claim. Debtor's plan proposes to pay Bolton \$0 on his secured claim. The plan improperly modifies Bolton's secured claim.

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 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 Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 17, 2017. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Objection to Discharge is sustained.**

Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on August 17, 2017. Dckt. 19.

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

The Debtor filed a Chapter 7 bankruptcy case on July 11, 2016. Case No. 16-24512. The Debtor received a discharge on October 17, 2016.

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

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on October 17, 2016, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 17-24590), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.



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

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

The Objection to Discharge filed by the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 17-24590, the case shall be closed without the entry of a discharge.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtor is delinquent in plan payments in the amount of \$2,713.00. Debtor has paid \$0 into the plan to date.

B. Debtor's plan proposes to pay interest on arrears to Farm Credit West, however this creditor may not be entitled to interest unless the note provides for interest on late payments.

C. Debtor proposes to avoid judgment liens but has not filed motions to avoid such liens.

D. Sutter County filed a claim for property taxes owed by the debtor. This claim is not provided for in the plan and Schedule J does not clearly provide sufficient expenses to allow debtor to pay this as an expense.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

- A. Debtor failed to appear at the first meeting of creditors. The court notes that the debtor did appear at the continued meeting of creditors.
- B. Debtor is delinquent in plan payments in the amount of \$110.00. Debtor has paid \$0 into the plan to date.
- C. Plan fails to provide for Les Schwab's secured claim for \$500.19.

Trustee filed a supplement to its objection, indicating that debtor failed to properly report his address. The Trustee does not withdraw any of its objections, although the court notes that the supplement was filed prior to the continued meeting of creditors.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's counsel, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 14, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 6-1 of Thea Offenbacher-Costa is continued to November 21, 2017 at 2:00 p.m.**

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Thea Offenbacher-Costa ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$46,384.50. Objector asserts that the claim was filed after the bar date to file claims. The bar date was June 7, 2017 and the proof of claim was filed June 8, 2017.

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).

Trustee filed a reply indicating that the original objection had errors. The Trustee refers to a response filed by the Creditor, however the court does not see any such response on the docket. The Trustee indicates that the parties agree that the matter should be continued to November 21, 2017.

The court will continue the hearing to November 21, 2017 at 2:00 p.m.

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 filed in this case by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim is continued to November 21, 2017 at 2:00 p.m.

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**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to deny the Motion to Confirm the Plan.**

The Trustee opposes confirmation on the basis that:

A. The plan may not be debtors' best effort. The debtors' latest Schedules reflect an ability to pay \$3,232.19 however the plan calls for future payments to be only \$1,877.61. Furthermore, Schedule J appears to include \$407.00 for student loan repayment (that starts in July 2018) and \$50.00 for property taxes (that appear to be paid by the mortgage through escrow). Debtor has increased expenses by \$1,043.00 since the filing of this case 8 months ago.

B. Debtor listed the IRS in the amount of \$24.33 however the IRS filed a secured claim in the amount of \$63,284.93.

C. The additional provisions indicated that Debtor was in a plan with Nationstar Mortgage to cure arrears prior to the filing of the Chapter 13 case, however there is no evidence that this claim has been paid.

D. The additional provisions state that the 2nd deed of trust holder Ditech Financial LLC is not being provided with payment as Ditech has not demanded a payment in years.

E. The plan does not provide to pay unsecured student loans despite being a 100% plan. The plan states that "student loans are in current forbearance plan



and do not have any payments due and not provided for in the plan.”

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 6, 2017. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

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

A. Debtor is delinquent in plan payments in the amount of \$1,250.00. Debtor has paid \$0 into the plan to date.

B. Plan fails to provide for all priority debts. Franchise Tax Board filed a proof of claim indicating unsecured debt of \$1,258.16 and that no tax return has been filed for 2014, 2015 and 2016. The debt is not provided for in debtors' plan.

C. Debtor has failed to provide the Class 1 checklist and Authorization to Release Information forms to the Trustee.

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

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

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

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

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

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47. [17-24004](#)-C-13 STEVE RAMIREZ-FOURKILLER MOTION TO CONFIRM PLAN  
[DJC](#)-2 AND TINA FOURKILLER 8-18-17 [[17](#)]  
Diana Cavanaugh

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**Final Ruling:** No appearance at the October 3, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2017. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 29, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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