

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 17, 2019 at 3:00 p.m.

1.	<u>18-27720-E-13</u> <u>TLW-6</u>	DAVID RYNDA Tracy Wood	CONTINUED MOTION BY TRACY L. WOOD TO WITHDRAW AS ATTORNEY 7-30-19 [230]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on July 30, 2019. By the court's calculation, 63 days' notice was provided. 14 days' notice is required.

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

The Motion to Withdraw as Attorney is denied without prejudice.
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Tracy Wood ("Movant"), counsel of record for David Jerome Rynda ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case.

At a recent Status Conference for this case and a related Adversary Proceeding, No. 19-02023, Movant (on behalf of Debtor) reported that a settlement was being discussed, and that this Motion should be continued.

Review of Adversary Proceeding 19-2023

A review of the Adversary Proceeding Docket does not indicate that a settlement is in process. On October 16, 2019, a Complaint was filed by Movant for the Plaintiff-Debtor. 19-2023; Third Amended Complaint, Dckt. 72.

On November 16, 2019, an Answer to the Third Amended Complaint, Counter-Claims, and a Demand for Jury Trial was filed by Defendant Cross-Plaintiff Elina Machado. *Id.*; Dckt 76. In addition to twenty-four affirmative defenses, Counter-Claims for Waste, Cancellation of Instrument, Declaratory Relief, and Quiet Title are set out.

For the Cancellation of Instrument Counter-Claim, Counter- Plaintiff alleges that deeds, deeds of trust, and other instruments were given by Plaintiff Counter-Defendant to various persons, including Counter-Defendant's brother. No persons other than the Counter-Defendant are named in the Counter Claims, and no action identified as a third-party complaint has been filed by Counter-Plaintiff.

On November 18, 2019, two days after the Answer and Counter-Claims were filed, Plaintiff filed a motion for entry of default. *Id.*; Dckt. 78.

On November 28, 2019, Plaintiff also filed an Objection to Demand for Jury Trial, Motion to Strike Affirmative Defenses, and have Deemed Admitted Defendant's Responses to Plaintiff's Complaint. *Id.*; Dckt. 79. This twenty-four page pleading combines the motion, points and authorities, and exhibits into one document, and does not file them as separate pleadings as required by Local Bankruptcy Rule 9004-2 and 9014-1(d). This is set for hearing on January 30, 2020 (the pleading contains a clerical error stating the year to be 2019).

On November 18, 2019, Plaintiff filed a Motion for Judgment on the Pleadings. *Id.*; Dckt. 85. The Motion directs the court to read the Memorandum of Points and Authorities, as well as the pleadings and papers filed therewith, and then any other documentary evidence as may be presented, to ascertain the grounds upon which the relief is requested – as opposed to the Motion stating with particularity the grounds upon which the relief is requested as provided in Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007.

On November 19, 2019, a request for entry of default was filed by Plaintiff against Gabriel Machado.

December 17, 2019 Hearing

From a review of the Adversary Proceeding, it appear clear that whatever difficulties may have existed between Counsel and Debtor, they have been resolved. Counsel is now proceeding full speed ahead in representing Debtor in connection with the this bankruptcy case and the property of this bankruptcy estate.

The Motion is denied without prejudice.

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

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

hearing.

The Motion to Withdraw as Counsel filed by Tracy L. Wood, Esq., counsel for Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Incur Debt is granted.</p>
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Darrell Kevin Rhym and Chuenta Lenise Rhym ("Debtor") seeks permission to refinance the mortgage on real property commonly known as 7641 Prescott Way, Sacramento, California, with a total purchase price of \$286,027.00 and monthly payments of \$1,951.23 to RSI Financial Services over 30 years with a 4.125% fixed interest rate.

Trustee's Response

On November 19, 2019, Trustee filed a Response. Dckt. 46. Trustee does not oppose the Motion on the basis that Debtor is current in a confirmed 100% plan. Trustee adds that the proposed transaction involves a claim in Class 4, and would result in the Debtor having savings of \$136.00 per month. The transaction appears to have a lower interest rate, a lower total payment than the \$2,035.49 in the current claim, and is for 30 years which appears to be slightly beyond the current note.

Creditor's Response

On December 12, 2019, Creditor filed a Response. Dckt. 48. Creditor states that so long as full payment is made to Creditor prior to the new loan being finalized, Creditor has no opposition. Further adding, that after speaking with Debtor's counsel, Debtors agreed to file a supplement to confirm that the full payment of the existing loan will be made prior to the new loan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

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

The Motion to Incur Debt filed by Darrell Kevin Rhym and Chuenta Lenise Rhym ("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 Darrell Kevin Rhym and Chuenta Lenise Rhym is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 43.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 26, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor is delinquent \$150.00 in plan payments.
- B. Debtor failed to appear at the First Meeting of Creditors.
- C. Debtor cannot make plan payment required.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$150.00 delinquent in plan payments, which represents one month of the \$150.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan payment required is \$150.00, however, the Debtors budget reflects their rental expense as \$1,405.00. The Debtor admitted the rental expense is actually \$1,455.00. It is not clear if Debtors' utility expenses listed on line 6a - 6c are accurate. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

United States Life Insurance Company in the City of New York ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor fails to account for pre-petition arrearage and incorrectly lists Creditor as a Class 4 claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$1,490.18 in pre-petition arrearages. The Plan does not

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

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 United States Life Insurance Company in the City of New York (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on November 26, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtors do not appear to be able to make plan payments as they are both unemployed.

DISCUSSION

Trustee's objections are well-taken.

Cannot Comply with the Plan

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Plan is not feasible because Debtors currently lack sufficient income to support proposed plan payments. Debtors' Plan calls for payments of \$1,200.00 per month for 12 months, and then

\$1,480.00 per month for 48 months. According to Schedule I, Debtors are both currently unemployed. Debtors admitted at the First Meeting of Creditors that they are both unemployed and looking for work. Further, Debtors only current source of income is from Social Security in the amount of \$1,280.00 per month.

Additionally, Trustee filed a Supplement to his objection on December 4, 2019. Dckt. 21. Trustee informs the court that Trustee received an email from creditor Vanderbilt Mortgage's counsel which included a "Three Day Notice to Pay Rent or Quit, Three Day Notice to Perform Covenants or Quit, and Sixty Day Notice of Termination of Tenancy." The email indicates that Debtors have not listed all of their creditors, including but not limited to, Heritage Oaks Mobile Home Park where creditor's collateral is located.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 8, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, Inocente Salinas ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$581.00 per month for months 1 - 24 (March 2019 - February 2021), then payments of \$1,281.00 per month for months 24 - 42 (March 2021 - August 2022) with a 100% dividend to unsecured claims totaling \$25,957.64. Amended Plan, Dckt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on December 2, 2019. Dckt. 32.

DISCUSSION

Trustee requests that two errors be corrected in Debtor's Amended Plan.

1. Section 7.01 regarding section 3.08 Class 2(B) indicates \$3,514.58 principal and

\$306.10 interest to be paid to Travis Credit Union through October 2019. Trustee actually disbursed a total of \$4,371.47 through October, and a total of \$4,922.26 to date.

- 2 Section 7.01 regarding section 2.01 proposes a monthly plan payment of \$581.00 for months 1 - **24** (March 2019 - February 2021), then \$1,281.00 for months **24** - 42 (March 2021 - August 2022). Trustee believes this to be a typographical error where it appears Debtor's intent is to increase the plan in March 2021, which is month 25 where Debtor's Petition was filed on February 19, 2019.

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 8, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, stating the amendments correcting the total paid to Travis Credit Union of \$4,922.26 by Trustee and correcting the typographical error where it appears to be month 25 - 42, instead of 24 - 42, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2019. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Denese Elizabeth Balmer ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$650.00 for 60 months with a 20% dividend to unsecured creditors totaling \$28,774.94. Amended Plan, Dckt. 37. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S / CREDITOR'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 3, 2019. Dckt. 44.

DISCUSSION

Plan Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan may not be feasible on the basis that Debtor fails to adequately explain her expenses. The Amended Schedule J shows seven changes from the original filed on September 11,

2019, yet Debtor does not explain any of these changes in her declaration.

At the Meeting of Creditors, Debtor explained that her transportation expenses lessened due to job relocation but no other explanation has been provided for the other changes. Debtor removed the car payment expense listed on the Original Schedule J but her monthly disposable income remains at \$650.37. Trustee argues that with removal of this expense, Debtor should have the ability to pay more into the Plan.

Additionally, Trustee argues that Debtor appears above median income. Debtor claims an additional public transportation expense of \$217 without explanation. Debtor also claims a continuing charity expense of \$500.00, but this item does not appear in the last two years on the Statement of Financial Affairs. Trustee contends that if these deductions are not allowed, Debtor will have a positive monthly disposable income under §1325(b)(2) of \$674.76

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 26, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor cannot make the payments under the Plan or comply with the Plan, 11 U.S.C. §1325(a)(6).

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan Is Not Feasible because Debtor's Plan calls for payments of \$2,500.00 per month, with additional income to be paid into the Plan from the sale of real property to allow for all claims to be paid in full.

At the Meeting of Creditors, Debtor admitted that she does not intend to sell her real property commonly known as 2481-2483 American River Drive, Sacramento, California as stated in the Plan's Additional provisions. Instead, Debtor intends to rent out the 2nd unit for \$2,000.00 per month. Debtor's budget does not include any income or expenses for the property.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

FINAL RULINGS

**9. [19-21310](#)-E-13 WANDA COLLIER-ABBOTT MOTION TO CONFIRM PLAN
 Richard Jare 10-28-19 [[112](#)]**

Final Ruling: No appearance at the December 17, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2019. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on January 28, 2020, to allow the Parties to address the issues concerning the Additional Provisions for this proposed Plan and appropriate adequate protection payments under an “Ensminger Provision.”

The debtor, Wanda Collier-Abbott (“Debtor”) seeks confirmation of the Modified Plan because her previous plan had been denied and these payments are feasible and it is close to the most that she can afford to pay. Declaration, Dckt. 114. The Modified Plan provides \$2,100.00 to be paid for each of the first 6 months, thereafter pay the monthly sum of \$2,500.00 for one (1) month and thereafter pay \$2,750.00 then commencing month #16, the payment shall be \$2,430.00 per month, and a 0 percent dividend to unsecured claims totaling \$5,000.00. Modified Plan, Dckt. 115. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

Real Time Solutions, Inc. ("Creditor") holding a secured claim filed an Opposition on November 26, 2019. Dckt. 127.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 2, 2019. Dckt. 129.

CREDITOR'S OPPOSITION

The Bank of New York Mellon ("Creditor") holding a secured claim filed an Opposition on December 3, 2019. Dckt. 135.

DISCUSSION

Creditors's and Trustee's concerns are well taken. There are several issues with Debtor's Modified Plan.

Attorney Fees

Trustee objects to the no look fee and Counsel should be required to file and serve a motion for fees pursuant to 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016 and 2017.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$2,750.00 delinquent in plan payments, which represents one month of the \$2,750.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Ensminger Provision

The Plan includes additional provisions that improperly attempt to alter the rights of a claim secured by an interest in Debtor's principal residence that seem contrary to 11 U.S.C. § 1322(b)(2). Additionally, Trustee points out that there is additional language that is not normally part of the authorized language.

With respect to the Bank of New York Mellon claim, the proposed terms of the Additional Provisions in the Plan (Dckt. 115 at 8) include:

- a. Monthly Adequate Protection payment proposes payments of \$665.38 to escrow for taxes and insurance.
- b. Debtor will pursue a loan modification.

- c. If the loan modification requires cure payments to be made during the term of the Chapter 13 Plan, the arrearage payments and current monthly payment will be made as Class 1 secured claim payments.
- d. If the modified payments can be made without altering the unsecured claim distribution, no modification of the plan will be required.

Failure to Cure Arrearage of Creditor- Bank of New York Mellon

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$37,354.41 in pre-petition arrearage. The Plan fails to cure those arrearage in that the Plan proposes to cure those arrears either through a loan modification or through the refinance or sale of the Property by month 36 of the Plan. However, the Plan does not provide an actual time frame in which any of these actions will happen. Debtor does not provide any explanation as for the need for the long delay in the sale of the Property. Creditor asserts this delay is unacceptable.

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

Plan is Not Feasible

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee contends that the Plan is not feasible because the Plan proposes the refinance or sale of the Property. Further arguing that this sale or refinance appears speculative or as a delay, as the Plan fails to provide an actual time frame in which any of these actions will take place or why it should take 36 months to sell or refinance.

Trustee further asserts that the Debtor cannot make the plan payment because the current Schedule J indicates a net income of \$2,100.00 per month. This amount is not enough as the Plan calls for payments of \$2,750.00 per month for eight (8) months.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Additionally, Trustee asserts that, to the extent that the plan seeks to make adequate protection payments to Creditor Real Time Solutions and The Bank of New Mellon, Debtor has not provided any analysis to show the proposed payments are reasonable. Debtor proposes to cut monthly payments to Creditor Real Time Solution by about half, and to extend the maturity date indefinitely. As for Creditor Bank of New York Mellon, Debtor proposes to cut monthly payments to this Creditor slightly forcing the Creditor to pay less on property taxes and insurance.

Further, Trustee alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I) because Debtor's proposed payments to the secured Creditor are not equal each month, contrary 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

Failure to Provide for a Secured Claim

Two creditor assert claim over Debtor's principal residence. Creditor Bank of New York Mellon asserts a claim of \$312,589.38 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$311,857.00 and indicates that it is secured by a first deed of trust on Debtor's residence. Creditor Real Time Resolutions, Inc. asserts a claim of \$221,536.60 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$124,857.00 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

10. [19-25745-E-13](#) **GERALD/STATHIA SEARLES** **MOTION TO CONFIRM PLAN**
[MRL-1](#) **Mikalah Liviakis** **11-12-19 [18]**

Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Gerald Anthony Searles and Stathia Despina Searles ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 22, 2019. Dckt. 25. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Gerald Anthony Searles and Stathia Despina Searles ("Debtor") having

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 12, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

11.	<u>19-26452-E-13</u> <u>DPC-1</u>	JESSICA PLANT Mikalah Liviakis	OBJECTION TO DISCHARGE BY DAVID CUSICK 11-18-19 [14]
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Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 18, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Jessica Fields Plant's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on August 6, 2016. Case No. 16-42242. Debtor received a discharge on November 15, 2016. Case No. 16-42242.

The instant case was filed under Chapter 13 on October 16, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on November 15, 2016. , which is less than four years preceding the date of the filing of the instant case. Case No. 16-42242. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-26452), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-26452, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on November 18, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Viliami Moahengi Fonua and Patricia Afu Fonua’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on August 27, 2018. Case No. 18-25385. Debtors converted to Chapter 7 on May 20, 2019. Debtor received a discharge on September 3, 2019. Case No. 18-25385, Dckt. 44.

The instant case was filed under Chapter 13 on October 1, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on September 3, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-25385, Dckt. 44.

Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 19-26157), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 19-26157, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Jason Matthew Brown and Christina Noelle Brown ("Debtor"), have filed evidence in support of confirmation.

On December 2, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition provided that the order on this Motion corrected Debtor's Plan to reflect authorization of Trustee's previous disbursement of 1.79% dividend to unsecured creditors. Dckt. 33.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Jason Matthew Brown and Christina Noelle Brown ("Debtor") having

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 12, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, with additional language authorizing all payments Trustee has already paid to unsecured creditors in Class 7, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

14.	<u>19-23781</u> -E-13 <u>BB-4</u>	VERLIN JOHNSON Bonnie Baker	MOTION TO CONFIRM AMENDED PLAN 11-6-19 [59]
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Final Ruling: No appearance at the December 17, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 6, 2019. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Verlin K. Johnson ("Debtor") has provided evidence in support of confirmation.

On December 3, 2019, Trustee filed an Opposition. Dckt. 64. Trustee opposes confirmation on the basis that under the Nonstandard provisions, Debtor is to pay \$2,030.00 for 12 months and \$3,817.00 for 48 months. Whereas, the latest Schedule J filed September 16, 2019 shows a disposable

monthly income of \$479.00. The Trustee is unsure that Debtor will be able to afford the plan payment.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Amended Response on December 10, 2019. Dckt. 70. Trustee no longer opposes Debtor’s Motion as Debtor amended Schedule J (Dckt. 67) to reflect the correct amount of \$2,030.00 for monthly disposable income as stated in the Nonstandard Provisions of Debtor’s Amended Plan.

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on November 5, 2019, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 8, 2019. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Hughes Federal Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$17,640.00.

The Motion filed by Denese Elizabeth Balmer ("Debtor") to value the secured claim of Hughes Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 32. Debtor is the owner of a 2015 Honda CRV ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$17,640.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on September 30, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,617.86. Declaration, Dckt. 32. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$17,640.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion

pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Hughes Federal Credit Union (“Creditor”) secured by an asset described as 2015 Honda CRV (“Vehicle”) is determined to be a secured claim in the amount of \$21,617.86, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$17,640.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

16.	<u>19-25193-E-13</u> <u>DPC-1</u>	DAMON TURNER Scott Hughes	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 10-10-19 [21]
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Final Ruling: No appearance at the December 17, 2019 hearing is required.

David P. Cusick (“the Chapter 7 Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the December 17, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Brian Mitchell Okamoto ("Debtor"), has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 2, 2019 on the basis that Debtor was delinquent \$1,930.00 under the Purpose Plan. On December 10, 2019, the Chapter 13 Trustee filed a Response stating he was no longer opposing the Amended Plan after Debtor made payments totaling \$1,930.00 bringing him current and filed Supplemental Schedules I and J on November 27, 2019. Dckt. 148. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brian Mitchell Okamoto ("Debtor") having been presented to the court,

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 12, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.