

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 3, 2015 at 2:00 P.M.

1. [14-21304](#)-C-13 CHARLIE/LAURA BALANGUE MOTION TO CONFIRM PLAN
PGM-3 Peter Macaluso 1-16-15 [[90](#)]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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 January 16, 2015. 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 January 16, 2015 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.

2. [14-30613](#)-B-13 DONALD/BROOKE HOBART
JGD-1 John Downing

CONTINUED MOTION TO VALUE
COLLATERAL OF AMERICAN FIRST
CREDIT UNION
12-11-14 [[18](#)]

Thru #4

Continued to March 9, 2015 at 1:30 in Department A.

3. [14-30613](#)-B-13 DONALD/BROOKE HOBART CONTINUED OBJECTION TO
JPJ-1 John Downing CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
12-11-14 [[22](#)]

Continued to March 9, 2015 at 1:30 in Department A.

4. [14-30613](#)-B-13 DONALD/BROOKE HOBART CONTINUED OBJECTION TO
MDE-1 John Downing CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
12-11-14 [[25](#)]

Continued to March 9, 2015 at 1:30 in Department A.

5. [14-30222](#)-C-13 CAMERON ELFORD
DPC-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-21-14 [[34](#)]

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 November 21, 2014. Fourteen days' notice is required. That requirement was 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. At the hearing -----
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The court's decision is to sustain the Objection.

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

1. Debtor's plan may not have been proposed in good faith. No claim amount has been listed in schedule F for a civil suit between Debtor and Creditor David Schoonover. The claim appears to sound in tort and appears unliquidated. The claim is for injuries stemming from a motor vehicle accident, presumably non-dischargeable. The question of good faith is whether filing this bankruptcy to propose a plan solely to reduce the amount of payment to the Creditor over the time of the plan is a good faith use of Chapter 13.
2. Under Cal. Civ. Code § 706.050(a)(1), out of Debtor's wages

of \$990.10 per month will be garnished \$247.52 per month. The Plan is proposing payments of only \$150.00 per month.

Debtor's Response

Debtor responds and states that he is now current under the terms of the proposed plan. Debtor notes that David Schoonover has local counsel and recently filed a Motion for Relief from Automatic Stay to proceed with the state court civil suit.

Prior Hearing

At the hearing on January 13, 2015, the court continued the hearing to March 3, 2015.

Declaration of Cameron Elford

On February 16, 2015, Debtor, Cameron Elford, filed a declaration in response to the Trustee. In the document, the Debtor declares the following:

1. He complete his treatment on December 12, 2014.
2. He was hired at In-n-Out Burger and commenced employment on February 4, 2015.
3. His new address is 8404 Adagio Way, Citrus Heights, California.

Discussion

On December 16, 2014, the court granted David Schoonover and Thuy Bich Van's Motion for Relief from stay to pursue the civil action to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtor's third party insurer.

The clear purpose of the plan is to reduce Debtor's payment on the \$337,969 restitution claim for the sixty month term. The debt is likely non-dischargeable as it is for personal injury caused by driving under the influence. The only other debt being treated under the plan is \$102.00 due and owing to Capital One, under a revolving credit account.

Under 11 U.S.C. § 1325(a)(3), to confirm a plan, the court must find that the plan was proposed in good faith. Trustee objects to the plan on the basis that it may not have been proposed in good faith.

Recently discussed by the Ninth Circuit Court of Appeals in *Drummond v. Welsh* (*In re Welsh*), 711 F.3d 1120 (9th Cir. 2013),

the bankruptcy court noted that it "reviews the totality of the circumstances to determine whether a plan has been proposed in good faith." The bankruptcy court observed that, in *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d 1219 (9th Cir. 1999), we had looked to four factors to determine whether a plan had been proposed in good faith: "(1) whether debtors

misrepresented facts in their plan or unfairly manipulated the [Bankruptcy] Code, (2) the debtors' history of filings and dismissals, (3) whether the debtors intended to defeat state court litigation, and (4) whether egregious behavior is present."

Id. at 1123. Under the totality of the circumstances, the court does not find that the plan was proposed not in good faith. Debtor has not disclosed on Schedule F the claim due to Schoonover and Van because that amount is unliquidated and claimant recently received relief from the stay to pursue the action to determine the amount of the claim. Debtor disclosed the restitution debt and there is no evidence that Debtor has misrepresented facts or is engaging in "egregious behavior."

Debtor is attempting to reorganize his limited financial circumstances in light of the restitution and potential civil award. Chapter 13 is intended to present Debtors with a means of restructuring repayments of debt in a way that minimizes the impact on a debtor's day-to-day life. Debtor's lack of secured debt or other unsecured debts should not preclude him from taking advantage of debtor remedies, such as bankruptcy, so long as he acts in conformity with the code and meets the eligibility requirements.

The court is concerned whether Debtor has sufficient regular income to maintain a chapter 13 plan for sixty months. 11 U.S.C. § 109(e). While Debtor's declaration clarifies that he commenced work on February 2, 2015, he did not attach pay stubs or any proof of monthly income. The court cannot confirm a plan when it cannot determine whether the debtor can afford the plan payments. 11 U.S.C. § 1325(a)(6).

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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

6. [14-32228](#)-C-13 RAJINDER/HARJINDER
DPC-2 RANDHAWA
Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-4-15 [[23](#)]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

The case having previously been dismissed, the Objection is dismissed as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2015. 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 January 15, 2015 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.

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 February 4, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----

The court's decision is to sustain the Objection.

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

1. Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a pending Motion to Value the secured claim of Meriwest Credit Union on a second deed of trust. The Motion is set for hearing on February 24, 2015 and if it is not granted, Debtor's plan lacks sufficient monies to pay the claim in full.
2. Debtor lists Meriwest in Class 4 of the Plan with a monthly payment of \$2,049. Creditor filed a secured claim (Claim 3-2) indicating mortgage arrears in the amount of \$4,582.80 and

a regular monthly payment of \$1,968.58. The plan states that this debt is current, so it appears to not comply with applicable law. 11 U.S.C. § 1325(a)(1).

At the hearing on February 24, 2015, the continued the Motion to Value to May 5, 2015. As this Objection relies on the resolution of the Motion to Value, it will be continued to the same date.

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 is continued to May 5, 2015 at 2:00 p.m.

9. [15-20244](#)-C-13 SAMUEL/DEBRA HOWARD
EJS-1 Eric Schwab

MOTION TO AVOID LIEN OF AGI
PUBLISHING
1-27-15 [[14](#)]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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 creditors, and Office of the United States Trustee on January 27, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid 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). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtors in favor of AGI Publishing, d/b/a Valley Yellow Pages for the sum of \$38,324.71. The abstract of judgment was recorded with Sacramento County on August 6, 2014. That lien attached to the Debtor's residential real property commonly known as 1928 G Street, Rio Linda, 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 \$260,000 as of the date of the petition. The unavoidable consensual liens total \$201,124 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$58,000 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. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 judgment lien of AGI Publishing, d/b/a Valley Yellow Pages, Fresno Superior Court Case No. 14CECG01287, recorded on August 6, 2014, with the Sacramento County Recorder, against the real property commonly known 1928 G Street, Rio Linda, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: The Motion to Extend the Automatic Stay 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay 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. At the hearing -----.

The Motion to Extend the Automatic Stay is grant.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-26000) was filed on June 4, 2014 and dismissed on January 15, 2015, for not comply with an order of the court to obtain confirmation within a stated period of time. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor argues that the instant case was filed in good faith and that the dismissal of the prior case was not due to the willful inadvertence or negligence on the part of the Debtor. During the previous case, Debtor had to pay for her recently adopted daughter to attend counseling, which was not covered by health insurance. The costs was approximately \$600 per month. Debtor has now transferred the counseling care over to the County, which offers services free of charge.

During the prior case, Debtor's car engine died and she required \$1,500 to fix the care. Later, the air filter, fuel filter, and spark plugs required replacing at a cost of \$500. Debtor's transmission then died and Debtor's father purchased Debtor a vehicle for her to use. Debtor is making monthly payments to her father.

These events caused Debtor to fall significantly behind on her plan payments; however, she is certain that, moving forward, she will be able to complete a Chapter 13 plan.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

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 Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

11. [13-31754](#)-C-13 VICTOR/SVETLANA PARSHIN OBJECTION TO CONFIRMATION OF
PPR-1 Richard Jare PLAN BY ONEWEST BANK, FSB
1-30-15 [[178](#)]

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 January 30, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----
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The court's decision is to sustain the Objection.

OneWest Bank, FSB opposes confirmation of the Plan on the following basis:

1. The plan is not adequately funded. 11 1325(a)(5) requires full payment of the allowed claim of Creditor. The proof of claim filed shows that pre-petition arrears of \$26,099.35 are due; however, they are not provided for in the plan.
2. Creditor argues that Debtor is attempting to avoid its lien without providing any statutory or legal authority. Debtor may not avoid the lien without an adversary proceeding because Creditor is the beneficiary of a consensual deed of trust.

3. The proposed first modified plan attempts to modify Creditor's Note and Deed of Trust without stating legal authority to do so. Debtor's proposed "HAMP" loan modification application was denied. The pre-petition arrears at the time of filing totaled \$26,099.35. Creditor objects to any valuation of the property to the extent it may modify its secured status via the terms of a Chapter 13 plan. Creditor objects on the basis that Debtor did not provide for ongoing mortgage payments and the cure of pre-petition arrears.
4. The plan does not provide for payments to Creditor by the Trustee, despite there being pre-petition arrears.

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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

12. [14-32260](#)-C-13 DAVID HENRY
ASW-1 Michael Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
2-5-15 [[25](#)]

Also #13

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 February 5, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----

The court's decision is to sustain the Objection.

Creditor, Bank of America, N.A., opposes confirmation of the Plan based on the following:

1. Creditor argues that property scheduled under Class 1 (8300 Summerplace Drive, Citrus Heights, California) identifying Bank of America, N.A. as the claimant is not property of the estate. The property was sole at a foreclosure sale on December 22, 2014. In regards to the Debtor, there are no longer any arrears in connection with the property and Debtor no longer has a responsibility to provide for the monthly mortgage payments.

Debtor should amend the plan to remove the subject property and any

treatment for the 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 Bank of America, N.A. 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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

13. [14-32260](#)-C-13 DAVID HENRY
DPC-1 Michael Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-4-15 [[21](#)]

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 February 4, 2015. Fourteen days' notice is required. That requirement was 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. At the hearing -----
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The court's decision is to sustain the Objection.

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

1. Debtor is \$2,240 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,240.00 is due on February 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Debtor testified at the Meeting of Creditors that he has had a change in circumstance that requires filing an amended plan. A proof of claim was filed for \$33,523 for a priority domestic support obligation, where the plan only provided for \$3,500.

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 the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

14. [14-31068](#)-C-13 JEFFERSON/PRISCILLA GRACE MOTION TO VALUE COLLATERAL OF
HDR-2 BAGALAY MERCHANTS ACCEPTANCE CORP.
Harry Roth 1-30-15 [[36](#)]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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 January 30, 2015. Twenty-eight days' notice is required. That requirement was met.

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.

The Motion to Value secured claim of Merchants Acceptance Corporation, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of Kirby Vacuum Cleaner. The Debtor seeks to value the property at a replacement value of \$300.00 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 collateral secures a purchase-money loan incurred in May 2013, more than one-year prior to the filing of the petition, with a balance of approximately \$2,619.75. 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 \$300.00. *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 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 Merchants Acceptance Corporation secured by a Kirby Vacuum Cleaner, is determined to be a secured claim in the amount of \$300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$300 and is encumbered by liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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 January 9, 2015. 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 January 9, 2015 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.

16. [14-31586](#)-C-13 DENNIS/CHRISTINE LUPTON MOTION TO MODIFY PLAN
EAT-3 Ethan Turner 1-16-15 [[37](#)]

Final Ruling: The Debtors having filed a "Notice of Withdrawal" for the pending Motion to Modify the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Modify the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Modify the Bankruptcy Case.**

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

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

A Motion to Modify having been filed by the Debtors, the Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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.

17. [14-27989](#)-C-13 GENTRY/MARIA LONG
APN-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO AUTO FINANCE
9-25-14 [[40](#)]

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 September 25, 2014. Fourteen days' notice is required. That requirement was 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Wells Fargo Auto Finance ("Creditor") opposes confirmation of the Plan on the basis that Creditor takes issue with the value assigned to its collateral under the plan.

The Debtors' plan proposes to value the secured claims of Creditor as to two items of collateral: a 2004 Infiniti G35 and a 2007 Chrysler 300C. Creditor's objection is to the proposed values of these secured claims.

The court issued two orders on October 14, 2014, valuing the secured claims of Creditor pursuant to two Motions to Value filed by the Debtors. The court held that the 2004 Infiniti G35 loan is secured in the amount of \$5,625 (Dkt. 70) and that the 2007 Chrysler 300C loan is secured in the amount of \$8,872.

OCTOBER 28, 2014 HEARING

At the hearing on October 28, 2014, counsel for Wells Fargo Bank, N.A. appeared and advised the court that his failure to appear at the hearing on the Motion to Value was caused by excusable error and that an evidentiary hearing on both motions may be necessary. The court continued the hearing to permit the parties to meet and confer on the value issue, and for Wells Fargo Bank, N.A. to file a motion to vacate the valuation orders, if necessary.

DEBTORS' DECLARATION OF GENTRY LONG

On December 1, 2014, Debtors' son, Gentry Long, submitted a declaration testifying to his use of the Infiniti G35 to drive to and from work. He was recently hired a Rose Billing Services in Los Angeles.

JANUARY 13, 2015 HEARING

At the hearing on January 13, 2015, the court continued the hearing to March 3, 2015. Creditor submitted additional evidence in support of its Objection.

CREDITOR'S DECLARATION OF SCOTT BROWN

Scott Brown is an Auto Inspection Specialist employed by an appraisal company and retained to appraise the subject vehicle.

Mr. Brown's declaration states that he appraised the 2007 Chrysler 300C vehicle on November 21 2014 and determined it to be worth \$11,588 (Exh. G, ECF. 82).

Mr. Brown also conducted an appraisal of the 2004 Infiniti G35 and determined its worth to be \$8,087.00. (Exh. H, ECF 82).

DISCUSSION

The court's decision is to overrule the Objection as the incorrect way to address the issue of valuation. Creditor's Objection to Confirmation is solely that it disagrees with two orders entered valuing its secured claims with regard to the two subject vehicles. The appropriate medium through which Creditor can seek the relief desired is by bringing a motion before the court seeking relief from the orders on the Motions to Value its secured claims.

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 the Plan is overruled and the plan is not confirmed.

18. [14-28291](#)-C-13 ANDRE WILLIAMS
DPC-2 Scott Sagaria

CONTINUED MOTION TO DISMISS
CASE
12-11-14 [[70](#)]

Also #19

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2014. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 Dismiss and dismiss the case.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$6,000 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,000.00 is due on December 25, 2014. Debtor has paid \$3,000.00 into the plan to date.
2. Trustee's Objection to Confirmation was heard and sustained by the court at the hearing on November 18, 2014. Creditor One Shot Mining's Objection to Confirmation was also heard and sustained by the court on November 18, 2014. No subsequent or amended plan and Motion to Confirm have been filed.

DEBTOR'S RESPONSE

Debtor states that he has prepared a First Amended Chapter 13 Plan and Motion to Confirm and anticipates filing the documents on January 9, 2015. Debtor asserts that the delay was due to confusion and debate over the status of the alleged Second Deed of Trust.

PRIOR HEARING

The court held its first hearing on the Motion on January 21, 2015 and continued the Motion to be heard concurrently with Debtor's Motion to Confirm, that was filed on January 20, 2014 and set for hearing on March 3, 2015.

DISCUSSION

The court is prepared to deny Debtor's motion to confirm for various reasons. The Trustee's Motion to Dismiss remains viable because Debtor has not cured the delinquency and have not presented a feasible, confirmable plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted and the case is dismissed.

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.

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 January 20, 2015. 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 Chapter 13 opposes confirmation of the plan based on the following:

1. Trustee is not certain that Debtor can make the payments called for under the plan. 11 U.S.C. § 1325(a)(6). One of the major secured creditors was granted relief from stay (Dkts. 98, 99, & 100). The Trustee is not certain Debtor can afford the plan payments based on the relief being granted.
2. Debtor is \$6,495.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$6,495.00 is due on February 25, 2015. Debtor has paid \$9,000.00 into the plan to date.
3. Debtor's plan does not pass Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total \$5,831.94 and Debtor proposes to pay 0.93% to unsecured creditors. Debtor's estimate of total unsecured debt is \$112,458, amounting to a distribution of \$1,046.86.

According to Schedules A, B, and C, non-exempt equity exists in real property of \$5,000, \$200 in a riding mower, and \$631.94 in

a 1990 Honda CBR Motorcycle, a 1991 Trina Board, and a 41 Foot Trailer.

4. Debtor's plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b). The plan proposes payments of \$6,495 per month. Schedule lists net income of \$8,262.41. The Debtor has \$1,767.41 more of disposable income per month.
5. Debtor's amended plan lists two debts to One Shot Mining in Class 2A, a first deed of trust for \$120,000, and a second deed of trust for \$113,141. Debtor's Schedule D only lists one debt to One Shot Mining for \$107,862.72.

Debtor's plan lists Lake County Treasurer - Tax Collector in Class 2A for property taxes on 14530 Lakeshore Drive, Clearlake, California of \$34,797.01. This debt is not disclosed in the schedules.

CREDITOR'S OPPOSITION

Creditor, One Shot Mining, LLC, objects to confirmation, as follows:

1. Creditor's motion for relief from stay was granted on January 13, 2015 and creditor intends to foreclose on its collateral: 14530 Lakeshore Drive, Clearlake, California.

On February 13, 2015, Creditor filed an ex parte motion to have the Minute Order modified to include relief to complete its judicial foreclosure sale, which was in process when Debtor filed the current case. As soon as creditor is able to continue with the judicial foreclosure, it intends to do so.

2. Even if creditor's collateral were to remain in the bankruptcy estate, creditor would not accept treatment of its claims.
3. The plan is not feasible under 11 U.S.C. § 1325(a)(6). The information contained in the B22C Form is inaccurate and Debtor has never amended his Schedules to include proper amounts of secured claims.

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.

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.

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 January 14, 2015. 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 Plan.

The Chapter 13 Trustee objects to confirmation based on the following:

1. Debtors did not file a Declaration in support of confirmation of their plan. Debtors bear the burden of proof in meeting the requirements of confirmation. The Trustee does not otherwise oppose confirmation of the plan.

DEBTORS' RESPONSE

On February 24, 2015, Debtors filed a response to the Trustee that included a Declaration filed in support of confirmation.

The Trustee's limited objection is resolved. 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 29, 2014 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.
