UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: August 13, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 13, 2019 at 1:00 p.m.

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1. 19-21705-B-13 JGD-3 **Thru #2** | TOBY TOLEN, John G. Downing | CONTINUED MOTION TO CONFIRM PLAN, 6-3-19 [53]

No Ruling

2. 19-21705-B-13 JGD-4 | TOBY TOLEN, John G. Downing | CONTINUED MOTION TO VALUE COLLATERAL OF TRI-COUNTIES BANK, 6-18-19 [63]

Tentative Ruling

The motion has been set for hearing on the 28-days 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion without prejudice.

Debtor's motion to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of business assets consisting of a 1986 Assembled trailer, 1986 Peerless trailer, hand tools, chainsaws, 1990 Link-Belt, 1986 Caterpillar D6D, and 1985 Altex Fire Pumper ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $36,500.00 as of the petition filing date. *See* dkt. 29, Sch. D. 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7-1 filed by Tri Counties Bank is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting the Debtor's personal property is worth more than the loan of $43,000.00 owed to Creditor. Creditor states that it has a security interest in "all of the Debtor's equipment, collateral, etc." (dkt. 84, p. 3) but focuses on the value of three pieces of personal property: a Skidder, a Dodge Ram 2500, and a Caterpillar D6D. Debtor's valuation for these items is $20,000, $2,000, and $12,000, respectively, based on Schedules A & D. *See* dkt. 29. Creditor's valuation, at a minimum, is $28,000, $5,773, and $21,000, respectively. Thus, Creditor's valuation for these three items alone is $54,773.00.

Discussion

The court finds issue with both the Debtor's and Creditor's valuations. Problematic is that the parties differ as to what collateral Creditor may claim a security interest. For example, Debtor's Schedule D and motion to value do not list Creditor as having a security interest in the Dodge Ram 2500, but Creditor claims that it does based on its Exhibit B, dkt. 83. Also Debtor's Schedule D and motion to value do not list Creditor as having a security interest in the Skidder, but Creditor claims that it does based on Exhibit B, dkt. 83.

Even if the Creditor is correct as to the collateral it claims a security interest, the valuations provided by the Debtor and Creditor cannot be relied upon. First, the valuations do not take into account the particular condition of the collateral. Second, 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge" and not the "private party range" as shown in Creditor's Kelley Blue Book valuation at Exhibit D, dkt. 83.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3.	18-23806-B-13 PGM-5	LISA THOMPSON Peter G. Macaluso	MOTION TO MODIFY PLAN 7-9-19 [87]

No Ruling

4. 18-26913-B-13 ROBERT SIMMONS — MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT
MOH-3 Michael O'Dowd Has — 7-26-19 [61]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to value the secured claim of Employment Development Department at $1,200.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of personal property consisting of household goods, electronics, and clothing ("Personal Property"). He does not have an interest in any real property. The Debtor seeks to value the Personal Property at a replacement value of $1,200.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 11-1 filed by Employment Development Department is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the lien of Creditor is $3,479.00 according to Claim No. 11-1. Debtor asserts that the Personal Property has a value of $1,200.00. Therefore, the Creditor's claim secured by a lien on the Personal Property is under-collateralized. The Creditor's secured claim is determined to be in the amount of $1,200.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5. 19-23824-B-13 ROLINA BROWN
KPM-1 Peter G. Macaluso
Thru #6

MOTION TO DISMISS CASE AND/OR MOTION FOR 180 DAY BAR AGAINST FILING ANY FURTHER CASE IN ANY CHAPTER
7-8-19 [35]

CONTINUED TO 9/17/19 AT 1:00 P.M. TO BE HEARD WITH CREDITOR'S CONTINUED OBJECTION TO CONFIRMATION.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

6. 19-23824-B-13 ROLINA BROWN
KPM-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR DOT CREDITORS STAMBUL/BROWNSTEIN
7-8-19 [33]

CONTINUED TO 9/17/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 8/29/19.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

7. 17-26827-B-13 SUN SIN — MOTION TO MODIFY PLAN
WW-3 — Mark A. Wolff — 7-2-19 [42]

Final Ruling

The motion has been set for hearing on the 35-days' 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)(B) 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. 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.

The court will enter a minute order.

8.	19-23239-B-13 JPJ-1	JANEY WALKER Timothy J. Walsh	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-27-19 [15]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

This matter was continued from July 23, 2019, to allow the Debtor additional time to file amended schedules or a declaration regarding her retirement account, and to file a declaration from Capital One Auto Finance as to the stipulated interest rate for its collateral. The Debtor has failed to do any of this.

The plan filed May 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9. 15-21845-B-13 JOSEPH BARNES — MOTION TO MODIFY PLAN
SS-13 Scott D. Shumaker — 7-9-19 [260]

Final Ruling

The motion has been set for hearing on the 35-days' 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)(B) 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. 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.

The court will enter a minute order.

10. 19-21745-B-13 LEA/HELEN ZAJAC — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1 — Timothy J. Walsh — 6-26-19 [26]

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

JP Morgan Chase Bank, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 11534 Acorn Drive, Gulfport, Mississippi (the "Property"). Movant has provided the Declaration of Della Walker to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Walker Declaration states that there are 3 post-petition payments in default totaling $3,3023.40.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $113,615.50 as stated in Creditor's motion. The value of the Property is determined to be $110,000.00 as stated in Schedules A and D filed by Debtors.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtors have failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11. 14-25050-B-13 TLC-2 STEPHEN PATTON
Tamie L. Cummins

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, SUBSTITUTE PARTY, AS TO DEBTOR
7-2-19 [91]

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to substitute David Patton to continue administration of the case, and waive the deceased certification otherwise required for entry of a discharge.

David Patton, brother of Stephen Patton ("Debtor") gives notice of the death of Debtor and requests the court to substitute David Patton in place of Stephen Patton for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [FED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute David Patton for Stephen Patton and to waive the § 1328 and financial management requirements for Stephen Patton. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. 19-23553-B-13 JGD-1 **Thru #13**
SHAWN/HEATHER WHITNEY
John G. Downing
MOTION TO VALUE COLLATERAL OF KABBAGE/CELTIC BANK
7-30-19 [41]

CONTINUED TO 9/17/19 AT 1:00 P.M. PENDING CHAPTER 11 CONVERSION MOTION TO BE FILED BY AUGUST 13, 2019, OR DISMISSAL ON TRUSTEE'S EX PARTE APPLICATION IF MOTION NOT TIMELY FILED. *See* Dkt. 52.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

13. 19-23553-B-13 JGD-2
SHAWN/HEATHER WHITNEY
John G. Downing
MOTION TO VALUE COLLATERAL OF MOUNTAIN AMERICA CREDIT UNION
7-30-19 [37]

CONTINUED TO 9/17/19 AT 1:00 P.M. PENDING CHAPTER 11 CONVERSION APPLICATION TO BE FILED BY AUGUST 13, 2019, OR DISMISSAL ON TRUSTEE'S EX PARTE MOTION IF MOTION NOT TIMELY FILED. *See* Dkt. 52.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

14. 18-27654-B-13 JASON/MOLLY ZYSMAN
DEF-4 David Foyil

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
6-25-19 [42]

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion.

Debtors Jason Robert Zysman and Molly Erin Zysman ("Debtors") seek approval of a stipulation entered into with the Chapter 13 Trustee ("Trustee") to allow Co-Debtor to proceed with a petition for dissolution of marriage filed on December 7, 2018, in the in Amador County Superior Court. Dkt. 42. The parties agree that the automatic stay of 11 U.S.C. § 362(a) should be modified to allow the filing and prosecution of a petition for dissolution and to determine the parties' respective interests in property in the dissolution proceeding.

The stipulation was filed on April 30, 2019, dkt. 40, and was served on all parties in interest. Dkt. 41. *See* Fed. R. Bankr. P. 4001(d)(1)(C). Due and sufficient notice of the stipulation and motion to approve it having been given, dkt. 43, and there being no objection from any party in interest, the motion is granted. The stipulation and its terms at Dkt. 40 are approved. *See* Fed. R. Bankr. P. 4001(d)(2), (3).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. 16-26572-B-13 DJC-4 — FRANK RUBALCAVA AND ARIANA CABRAL — Diana J. Cavanaugh — MOTION TO MODIFY PLAN — 7-3-19 [55]

Final Ruling

The motion has been set for hearing on the 35-days' 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)(B) 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. 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.

The court will enter a minute order.

16. 19-20680-B-13 JESSICA KELLER
LBG-3 Lucas B. Garcia

MOTION TO CONFIRM PLAN
7-5-19 [58]

No Ruling

17.	17-22681-B-13	CRAIG GLICK Ashley R. Amerio	NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 6-28-19 [38]

No Ruling

18.	14-32183-B-13 MET-1	NEVELL WALLACE AND ANGELA PRUDHOMME-WALLACE Mary Ellen Terranella	MOTION TO MODIFY PLAN 6-26-19 [54]

No Ruling

19. 19-20483-B-13 FRANCIS ESQUIVEL MOTION TO CONFIRM PLAN
EWV-220 Eric W. Vandermey 6-30-19 [41]

Tentative Ruling

The motion has been set for hearing on the 35-days 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Oppositions were filed by the Chapter 13 Trustee and Casa Del Monte Homeowner's Association. The court will address the merits of the motion at the hearing.

The court's decision is to not confirm the second amended plan.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $600, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Additionally, the Non-Standard Provisions is unclear since the number of plan payments from February 2019 to May 2019 is not five months as stated by the Debtor in the proposed plan but rather only four months.

As to the Objection to Confirmation of 2nd Amended Chapter 13 Plan (which is actually an opposition to the motion to confirm the second amended plan) filed by Casa Del Monte Homeowner's Association ("Creditor"), dkt. 49, it is overruled and dismissed. The certificate of service attached to the objection/opposition (and not filed as a separate document as required by Local Bankr. R. 9004-2(c)(1), 9004-2(e)(1), 9014-1(e)(3)) states that "Debtor's attorney and Chapter 13 Trustee will be served through ECF." Dkt. 49. The court's Local Rules do not permit service by or through ECF. *See* Local Bankr. R. 7005-1(a), 7005-1(d)(1). And even if such service was permissible, Creditor's certificate of service is itself defective in that it fails to "include the email addresses to which the document(s) were transmitted[.]" Local Bankr. R. 7005-1(d)(3). In short, service by Creditor of its opposition/objection is defective. Creditor's opposition/objection is therefore overruled and dismissed.

Because the Debtor is delinquent and the Non-Standard Provisions is unclear, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

20. 19-22488-B-13 BRENDA LEMMA
JPJ-1 Nikki Farris

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
7-10-19 [35]

CONTINUED TO 9/10/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN DATED JULY 25, 2019.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

21. 19-23988-B-13 MICHAEL MULLINS
DAO-1 Dale A. Orthner

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
7-16-19 [16]

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Santander Consumer USA Inc. at $9,975.00.

Debtor's motion to value the secured claim of Santander Consumer USA Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 BMW X5 ("Vehicle"). Debtor believes and asserts that the reasonable, fair-market value of Property, as defined by 11 U.S.C. § 506(a)(2), is $9,975.00. This is also consistent with Creditor's Claim No. 1-1. The Debtor states that the $11,000.00 value listed in the schedules is now believed by Debtor to have been somewhat overstated. Debtor agrees with Claimant's claim of value of $9,975.00.

The Debtor and Creditor both valuing the Vehicle at $9,975.00, the Debtor's valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. 19-24591-B-13 LIONEL/SHIRLEY JACKSON MOTION TO EXTEND AUTOMATIC STAY
CYB-1 Candace Y. Brooks 7-30-19 [8]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion to extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' third bankruptcy petition pending in the past 12 months after one was dismissed and a second was discharged. The Debtors' earlier prior bankruptcy case was dismissed on January 17, 2019, due to delinquency in plan payments (case no. 16-25181, dkt. 59). The Debtors' later bankruptcy pending in the last year received a discharge (case no. 19-20385). Since only one of the pending cases was dismissed, and not both, § 362(c)(3) applies. *See In re Williams*, 390 B.R. 780 (Bankr. S.D.N.Y. 2008) (stating that Congress intended to limit the applicability of § 362(c)(3) to bankruptcy cases that were dismissed, and not discharged, within the preceding 1-year period).

Pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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).

The Debtors assert that their financial circumstances have changed. In the dismissed case, their daughter, who resides with the Debtors, was not able to contribute as much toward household expenses because she did not have regular income. However, circumstances have now changed since their daughter has regular income and her husband is also residing with the Debtors and contributing to household expenses. Debtors' daughter and her husband contribute $1,000 toward rent and this has allowed Debtors to decrease their living expenses.

The Debtors have sufficiently rebutted, by clear and convincing evidence, 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 and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. The court will enter a minute order.

23. 16-27996-B-13 VICKI NAZAROFF
RJM-2 Rick Morin

MOTION TO MODIFY PLAN
6-28-19 [46]

No Ruling

24. 19-22297-B-13 ABEL RUSFELDT — MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
WSS-1 W. Steven Shumway — 7-10-19 [53]
Thru #25

Final Ruling

The motion has been set for hearing on the 28-days 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Chrysler Capital at $15,000.00.

Debtor's motion to value the secured claim of Chrysler Capital ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $15,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Chrysler Capital is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on June 26, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,057.02. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $15,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

25. 19-22297-B-13 ABEL RUSFELDT — MOTION TO CONFIRM PLAN
WSS-2 W. Steven Shumway — 7-10-19 [58]

Final Ruling

The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 34 days' notice was provided. Therefore, the motion to confirm is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26. 19-22597-B-13 ROBERT PORTER
MJ-1 Gabriel E. Liberman

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
6-17-19 [16]

Final Ruling

Before the court is a motion by secured creditor Wells Fargo Bank N.A. ("Creditor") to confirm that the automatic stay of 11 U.S.C. § 362(a) is not in effect in this Chapter 13 case so that it may commence and continue all acts necessary to foreclose under a deed of trust on the property at 7626 Cornejo Way, Sacramento, California. Dkt. 16. Debtor Robert J. Porter ("Debtor") filed a response. Dkt. 21.

The court has reviewed the motion and the response. The court also takes judicial notice of the docket in this case and in the Debtor's prior Chapter 13 case, case No. 18-21527. The court has determined that oral argument will not assist in the resolution of this matter. *See* Local Bankr. R. 9014-1(h). This decision is therefore issued as a Final Ruling. Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to grant the motion to confirm the absence of the automatic stay.

Discussion

This is the Debtor's second bankruptcy case following dismissal of a prior case within a one-year period. Debtor's prior case was filed on March 15, 2018, and was dismissed on March 11, 2019. The petition that commenced this case was filed on April 25, 2019. Dkt. 1. No motion to extend the automtaic stay was filed in this case. Hence, the automatic stay terminated in its entirety on the 30th day after the second petition date. *See* 11 U.S.C. § 362(c)(3)(A); *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 371-73 (9th Cir. BAP 2011); *see also Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

The Debtor's Chapter 13 plan filed on April 25, 2019, dkt. 2, was confirmed (without objection by Creditor) on July 27, 2019. Dkt. 20. The Debtor's confirmed plan provides for Creditor's claim in Class 1. Dkt. 2, § 3.07. So while it may be that there is no automatic stay currently in effect, the treatment of Creditor's claim in a confirmed Chapter 13 plan precludes Creditor from foreclosing or otherwise enforcing rights under applicable non-bankruptcy law unless and until the Debtor defaults under the terms of the plan. *See e.g., In Re Hileman*, 451 B.R. 522, 524-525 (Bankr. C.D. Cal. 2011).

Conclusion

For all the foregoing reasons, Creditor's motion is granted in that there is no automatic stay currently in effect in this case. Nevertheless, the absence of an automatic stay is of no benefit to Creditor because Creditor is bound by the terms of the Debtor's confirmed Chapter 13 plan to which it did not object and which provides for the treatment of Creditor's secured claim. Therefore, even in the absence of an automatic stay, Creditor may not foreclose or otherwise exercise any other right(s) under applicable nonbankruptcy law unless and until the court determines that the Debtor has defaulted under the terms of his confirmed plan and grants relief accordingly.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

27. 17-26199-B-13 HOWARD/CLARALYN SANT — CONTINUED MOTION TO DISMISS CASE
JPJ-4 Peter L. Cianchetta — 3-26-19 [83]

Tentative Ruling

The court continued this matter from June 4, 2019. In the June 4, 2019, civil minutes the court stated that the hearing date on this motion would be advanced once a modified plan is filed and a confirmation hearing date is set with the court. Dkt. 108. The civil minutes also state that if Debtors Howard and Claralyn Sant ("Debtors") have not confirmed a plan within sixty days, the case will be dismissed on the Chapter 13 Trustee's ("Trustee") ex parte application. *Id.*

The sixty-day confirmation period lapsed on August 3, 2019, or (because that date was a Saturday) Monday, August 5, 2019. No modified plan was filed after the June 4, 2019, hearing date, no modified plan was therefore confirmed within 60 days, the 60-day deadline to confirm a modified plan was not extended, and the 60-day confirmation period has now expired. Accordingly, if the Trustee files an ex parte application to dismiss before the continued August 13, 2019, hearing or moves to dismiss this case at the time of the continued hearing, the application or motion will be granted and this case will be dismissed.

The court will enter a minute order.

28. 19-22099-B-13 ELDRIDGE JACKSON MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 7-8-19 [43]
Add on #32

Tentative Ruling

The court has before it a Motion to Confirm First Amended Chapter 13 Plan Dated July 8, 2019, filed by Debtor Eldridge Jackson ("Debtor"). Dkt. 43. The first amended plan is filed at Dkt. 45. There are two oppositions to the motion. One is filed by the Chapter 13 Trustee ("Trustee"). Dkt. 71. The other is filed by Shelter Financial Services ("Creditor"). Dkt. 74. The Debtor filed a response to both oppositions. Dkt. 85.

The court has reviewed the motion, oppositions, response, and all related declarations and exhibits. The court takes judicial notice of the docket in this case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to deny the motion to confirm plan and order Debtor's counsel to show cause, in writing, as to why he should not be sanctioned.

Oppositions/Objections

The Trustee objects to confirmation on grounds that each of his three issues raised in an objection to confirmation and conditional motion to dismiss, JPJ-1, were heard and sustained/conditionally denied on June 11, 2019. *Compare* Dkt. 71 with Dkt. 28. The Trustee asserts that the Debtor has not resolved these issues and has failed to comply with 11 U.S.C. §§ 1325(a)(1), (3), and (6). The three issues are failure to submit proof of social security number, failure to file a motion to value collateral of Chrysler Capital ("Chrysler") which affects feasibility, and failure to amend Schedule A/B and the Statement of Financial Affairs.

Creditor objects to confirmation on the grounds that, despite the court's order granting Creditor's motion and terminating the automatic stay to permit Creditor to recover its collateral consisting of a 2016 Freightliner Tractor ("Freightliner"), Dkts. 41 & 50, and the order denying the Debtor's motion to reconsider the stay relief order, Dkts. 73 & 77, the first amended plan is not proposed in good faith. Creditor asserts the first amended plan is not proposed in good faith because it is an attempt by the Debtor to retain the Freightliner for the benefit of his father and therefore an attempt by the Debtor confirm a plan that benefits a non-debtor, third-party, insider.

Debtor filed a response stating that the issues raised by the Trustee are resolved and that he, and not his father, now intends to use the Freightliner. Dkts. 85, 86, & 95.

Discussion

Debtor's response lacks credibility. The court does not believe the Debtor. Debtor's attorney is headed down the same path. Explanation follows.

First, as to Creditor's objection, the court does not believe the Debtor that he intends to immediately return to long-haul trucking and therefore needs to retain the Freightliner for that purpose. From the inception of this case the Debtor expressed an intent to surrender the Freightliner, Dkt. 12, and stated quite forcefully that he intends to remain with his family and has no desire to return to trucking until his children are grown. Dkts. 53, 54. In other words, by the Debtor's own admission, the Debtor intended to fund a plan through non-trucking employment.

As the court previously noted, the Debtor's sworn statements that he did not intend to return to trucking until his children are grown are admissions that the Freightliner is not necessary to the Debtor's effective reorganization in this Chapter 13 case. Dkts. 73, 77. It is interesting that it was only after the court made findings and conclusions adverse to the Debtor based on those admissions that the Debtor changed his tune and made the current self-serving statements of a purported intent to return to

trucking. *See* Dkts. 86, 95. Simply put, the Debtor's positions regarding the necessity of the Freightliner are contradictory and not credible. And frankly, the court does not believe the Debtor.[1]

The court does believe that the Debtor's most recent statements regarding his sudden new-found love of long-haul trucking and his desire to return to it are an attempt to confirm a plan that would allow the Debtor to retain the Freightliner for his father's use and benefit. In other words, the court is persuaded that the Debtor seeks to confirm a Chapter 13 plan for the express benefit of a non-debtor, third-party, insider.[2] The court also believes that the Debtor's most recent statements are part of a continued effort by the Debtor and his attorney to frustrate, hinder, and delay Creditor's recovery of its collateral which the Debtor (and his father) have no basis to retain and use based on the court's prior rulings. That is bad faith and indicative of a plan not proposed in good faith. *See* 11 U.S.C. § 1325(a)(3). Creditor's objection is therefore sustained.

Now to the Trustee's objection and, significantly, the response the Debtor's attorney filed to it. As noted above, the Trustee objects to confirmation of the first amended plan and opposes the motion to confirm it on the basis that feasibility depends on the granting of a motion to value Chrysler's collateral and no such motion has been filed, set, and served. The Debtor, through his attorney, responded to that objection on August 6, 2019, and stated as follows:

> [T]he debtor has filed the motion to value [Chrysler's collateral] as required by the plan. This satisfies one trustee objection. This motion to value will be heard on the same date as this motion.

Dkt. 85, ¶ 1.

The factual statement by Debtor's attorney that (1) the Debtor filed a motion to value Chrysler's collateral and (2) that motion will be heard on the same day as the motion to confirm the first amended plan are false, baseless, and misleading. A review of the docket reflects that (1) no motion to value Chrysler's collateral was filed at any time during this case (2) and no motion to value Chrysler's collateral is on the August 13, 2019, 1:00 p.m. calendar. Due to the absence of any motion to value Chrysler's collateral, the Trustee's feasibility objection is sustained. *See* 11 U.S.C. § 1325(a)(6).[3]

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[1]The Debtor has also made other false statements under oath. In a declaration filed August 6, 2019, the Debtor states that, as of that date, his "father has returned the [Freightliner] to [him]." Dkt. 86 at 2:14. That is not true because Creditor located the Freightliner in Fort Bridger, Wyoming, on August 6, 2019. Dkt. 97, ¶ 2. Caught in a lie, the Debtor was forced to file a "corrected" declaration in which he once again changed positions and in which he now states "[t]he [Freighliner] will be in my possession on or before the date of this hearing, I am informed that my father is on track to return to California to give physical possession of the [Freightliner] on the 12th of August." Dkt. 95, ¶ 8. Again, credibility is key and in this court's view the Debtor lacks it. Hence, the court's disbelief of the Debtor's sudden new-found love of long-haul trucking and desire to abandon his family to return to it.

[2]This is not inconsistent with the Debtor's conduct. There is uncontested evidence on the docket that the Debtor obtained financing to purchase the Freightliner not for his benefit but for the benefit of his father. Dkts. 33, ¶ 7; 62.

[3]Because the representations that a motion to value Chrysler's collateral was filed and is set for hearing with the motion to confirm the first amended plan are false, baseless, and misleading, those statements are a further indication that the first amended plan was not proposed in good faith.

In addition, Debtor's attorney is ORDERED TO SHOW CAUSE, in writing, why he should not be sanctioned under Fed. R. Bankr. P. 9011 and/or the court's inherent authority for a lack of candor to the court or, more bluntly, for making false, baseless, and misleading statements of fact in papers filed and signed under Fed. R. Bankr. P. 9011.

A written response to the court's ORDER TO SHOW CAUSE shall be filed by August 27, 2019. The written response shall include a legal analysis, with citations to relevant authorities, and argument why sanctions should not be imposed for the conduct of Debtor's attorney described hereinabove. Sanctions may include, but are not limited to, a monetary sanction payable to the clerk of the court or a referral to the State Bar of California for consideration of ethical violations.

A hearing on the court's ORDER TO SHOW CAUSE shall be set on September 3, 2019, at 1:00 p.m. Debtor's attorney shall appear in person. Phone appearance is not permitted. Debtor shall also be present in person.

Conclusion

For the reasons stated above, the Trustee's and Creditor's objections are sustained, the motion to confirm the first amended plan is denied without prejudice, the first amended plan is not confirmed, and Debtor's attorney is ordered to show cause why he should not be sanctioned.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that counsel for the Debtor shall show cause, in writing filed by August 27, 2019, why he should not be sanctioned.

The court will enter a minute order.

And although those false and misleading representations were made by the Debtor's attorney and not the Debtor, the Debtor is nevertheless charged with his attorney's conduct in the confirmation process. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) ("As a general rule, parties are bound by the actions of their lawyers[.]"); *see also Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1101-02 (9th Cir. 2006) ("A party will not be released from a poor litigation decision made because of inaccurate information or advice, even if provided by an attorney.").

29. 19-23109-B-13 SHAWN/LORENA MOORE
JPJ-01 Travis E. Stroud

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-16-19 [17]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the claim of Siskiyou County is misclassified as a Class 1 claim. Class 1 claims are long-term secured debts that are delinquent when the case is filed. Property taxes do not fit within this definition and should be classified as a Class 2 claim in the plan. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Second, the Statement of Financial Affairs filed May 15, 2019, dkt. 1, p. 37, does not contain the Debtors' wet signature or electronic signature. The Statement of Financial Affairs does not comply with Local Bankr. R. 9004-1(c)(1)(B).

Third, it is unclear who the actual attorney of record is and whether the attorney is engaged in a scheme that involves an impermissible fee sharing. The Rule 2016(b) disclosure represents that Debtors paid fees to Travis E. Stroud, an attorney with Allen Chern located in Sacramento, California. However, the Statement of Financial Affairs, Question 16, contradicts this stating that the pre-petition fees were paid to Allen Chern LLC located in Chicago, Illinois. Rule 2012(b), Question 5, also states that the attorney has not agreed to share the disclosed compensation with any other person unless they are members and associates of the law firm. However, it appears that there is fee sharing where Allen Chern LLP retains the client and collects the initial retainer fees and then refers the client to a local attorney to complete the case. Additionally, where an attorney chooses to "opt in" under the Local Bankruptcy Rules, the Right & Responsibilities of Chapter 13 Debtors and the Local Bankruptcy Rules to not allow for payment of a portion of the fees to be paid to one firm and then the balance of that same fee to be paid to another firm. Lastly, it is unclear whether the attorney of record is actually Travis E. Stroud or Natalie Ludwig, who has signed all documents associated with this case.

Fourth, the Debtors have not provided the Trustee with a copy of their federal income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fifth, the Debtors have not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Sixth, it does not appear that the Debtors can make plan payments. According to Debtors' Schedule I, their monthly net income is $218. That is not enough for the Debtors to make payments as stated in the plan at $952 per month. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,149.00, which represents approximately 1 plan payment. An additional payment of $1,149.00 will be due by the date of the hearing on this matter. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed May 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

30.	19-20995-B-13 SBT-4	RUDY GONZALEZ, AND ROBERTA GONZALEZ Susan B. Terrado	CONTINUED MOTION TO CONFIRM PLAN 6-13-19 [74]

No Ruling

31.	19-23295-B-13 JPJ-01	MICHAEL GAINZA Michael O'Dowd Hays	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 7-16-19 [18]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to his operation of a business.

Second, the Debtor has not provided the Trustee with requested copies of certain items including, but not limited to, the last 6 months' profit and loss statements related to his medical provider business. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has failed to comply with 11 U.S.C. § 521.

Third, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, the Debtor's proposed plan provides no plan payments for the first 4 months. This is a delay that is prejudicial to creditors and also a financial burden to creditors, the Trustee, and the court, which must still administer the case without payment from the Debtor.

Fifth, the plan payment in the amount of $0.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims and Class 2 secured claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Sixth, Debtor has not provided any evidence that mortgage creditor SLS has agreed to waive its post-petition contract amount for the first 4 months of the plan. This is an impermissible modification of the Debtor's mortgage on his principle residence and it cannot be forced on the creditor without its consent in the Non-Standard Provisions of the plan. The plan does not comply with 11 U.S.C. § 1322(b)(2).

The plan filed May 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

32.	19-22099-B-13 JWC-1	ELDRIDGE JACKSON Lucas B. Garcia	MOTION FOR SANCTIONS AND/OR MOTION FOR SANCTIONS AGAINST DEBTOR'S ATTORNEY FOR MISCONDUCT UNDER FRBP 9011 8-6-19 [88]

See #28

No Ruling

33. 18-27747-B-13 VIRGINIA HUNT
SLE-3 Steele Lanphier

CONTINUED MOTION TO CONFIRM PLAN
6-28-19 [50]

Tentative Ruling

A hearing on the motion to confirm the third amended plan filed by debtor Virginal Hunt ("Debtor") was held on August 6, 2019, at 1:00 p.m. Steele Lanphier appeared for the Debtor. The Chapter 13 Trustee ("Trustee") also appeared.

During the August 6, 2019, confirmation hearing Debtor's attorney stated on the record in open court that a "new plan" was filed "last Friday" indicating that an amended plan was filed on Friday, August 2, 2019. Dkt. 60 (audio at 0:21 to 0:45). Referring to the plan that Debtor's attorney stated was filed "last Friday," the court asked Debtor's attorney if that was then a fourth amended plan to which Debtor's attorney replied "yes, sir." *Id.* (audio at 0:56-0:59). Based on the representations by Debtor's attorney that the third amended plan was mooted by a newly-filed fourth amended plan the court overruled the Trustee's objection to confirmation of the third amended plan and denied the motion to confirm it, both as moot.

Following the August 6, 2019, confirmation hearing the court reviewed the audio file of the proceeding and the docket. **No fourth amended plan was filed on Friday, August 2, 2019, as counsel represented to the court or at any time thereafter.** That raises two issues.

First, the Trustee's objection to confirmation of the Debtor's third amended plan, dkt. 58, is sustained, the motion to confirm the third amended plan is denied without prejudice, and the third amended plan is not confirmed.

Second, Debtor's attorney is **ORDERED TO SHOW CAUSE**, in writing, why he should not be sanctioned under Fed. R. Bankr. P. 9011 and/or the court's inherent authority for his lack of candor to the court and for making a blatantly false representation to the court that a fourth amended plan was filed three calendar days prior to the confirmation hearing on the third amended plan when in fact no such fourth amended plan was filed.

Debtor's counsel shall file a written response to this order to show cause by August 27, 2019. The response shall include citation to relevant legal authorities and argument as to why sanctions should not be imposed. A hearing on the order to show cause shall be set for September 3, 2019, at 1:00 p.m.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that counsel for the Debtor shall show cause, in writing filed by August 27, 2019, why he should not be sanctioned.