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: December 3, 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

December 3, 2019 at 1:00 p.m.

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1. 19-24202-B-13 HORACE/ALBERTA HODGES — MOTION TO CONFIRM PLAN
SS-1 Scott D. Shumaker — 10-21-19 [28]

CASE DISMISSED 11/20/19

Final Ruling

The case having been dismissed on November 20, 2019, the motion to confirm is denied as moot.

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

The court will enter a minute order.

2.	19-21705-B-13 JGD-6	TOBY TOLEN John G. Downing	MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY 11-4-19 [96]

Final Ruling

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

3. 19-20007-B-13 NICHOLAS BONANNO MOTION TO SELL
MEV-5 Marc Voisenat 11-9-19 [107]

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 deny the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor Nicholas Bonanno ("Debtor") proposes to sell the property described as 7929 Butte Avenue, Sacramento, California ("Property").

Proposed purchaser Jon Jernigan has agreed to purchase the Property for $650,000.00. Debtor states that the only known secured lien against the Property is a deed of trust in favor of The Socotra Opportunity Fund, LLC ("Socotra"), who has filed a Claim No. 2-2 for $409,314.03.

Socotra has filed an opposition to the motion and states that the Debtor has no authority to sell the Property because he no longer owns it. Socotra states that the court had granted its relief from stay on November 8, 2019. Dkt. 106. Socotra thereafter conducted a trustee's sale on November 15, 2019. Dkt. 113, exh. 2. As a result of the trustee's sale, the Debtor no longer has any ownership interest in or title to the Property. Accordingly, the Debtor cannot sell the Property.

Based on the evidence before the court, the court determines that the Debtor does not have an interest in the Property and does not have authority to sell the Property. And in that regard, the Debtor's motion to sell borders on the frivolous. The motion is therefore denied.

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

The court will enter a minute order.

4. 19-22312-B-13 AMELIA KROUSE
HSM-3 Mark W. Briden

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
11-6-19 [53]

Tentative Ruling

Secured creditors Robert L. Pastega and Deborah Pastega ("Creditors") move to dismiss or convert this Chapter 13 case.[1] Creditors' motion is not opposed.

For the reasons explained below, Creditors' motion will be granted and this case will be dismissed with the dismissal subject to the 180-day refiling bar of 11 U.S.C. § 109(g)(1). The court's findings of fact and conclusions of law are also set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Additionally, the court will retain jurisdiction over the dismissed case and enter an order for debtor Amelia Krouse ("Debtor") and her attorney, Mark Briden, to show cause why either, or both, should not be sanctioned $1,000.00 under Fed. R. Bankr. P. 9011, the court's inherent authority, and/or the court's local rules for submitting false and misleading sworn statements in a declaration filed to support confirmation of an amended plan and in amended schedules.

Background

The Debtor filed this Chapter 13 case, dkt. 1, and an initial plan, dkt. 2, on April 15, 2019. Several days before the Debtor filed her petition, on or about April 9, 2019, she requested a copy of her deceased mother's trust documents from the trust's attorney. Dkt. 42 at ¶ 9. The trust's attorney provided the Debtor with a copy of her mother's trust agreement and pourover will on or about April 11, 2019. *Id.* at ¶ 10. The Debtor made no mention of any inheritance from her mother or interest in her deceased mother's estate in the initial schedules filed with the petition. Dkt. 1 at Sch. A #35.

Meanwhile, the Chapter 13 Trustee ("Trustee") objected to confirmation of the Debtor's initial plan. Dkt. 18. Creditors did as well. Dkt. 23. The court sustained the Trustee's objection following a hearing held on July 9, 2019. Dkts. 25-29.

On June 24, 2019, the Debtor signed (under penalty of perjury) and her attorney filed amended schedules in which the Debtor claimed to be an heir of her mother's estate and, as such, she stood to inherit real property in Santa Cruz, California. Dkt. 21 at Sch. A #35. Thereafter, on August 14, 2019, the Debtor filed an amended plan, dkt. 35, a motion to confirm it, dkt. 32, and a supporting declaration (also signed by the Debtor under penalty of perjury and filed by her attorney). Dkt. 34. The Debtor's supporting declaration states that the Debtor: (1) is represented by a Santa Cruz attorney by the name of Kathleen Burlington; (2) in February 2019 her mother died intestate; (3) she has no brothers or sisters; and (4) she is the sole heir of her mother's estate. Dkt. 34 at ¶ 5. The Debtor proposed to fund payments to creditors under the amended plan by selling the supposedly inherited Santa Cruz property. Dkt. 34 at ¶ 5-6; dkt. 35 at § 7.01.

The Trustee again objected to confirmation of the Debtor's amended plan. Dkt. 37. Creditors did as well. Dkt. 41. Creditors' opposition identified a number of significant false sworn statements and material misrepresentations by the Debtor regarding her purported inheritance of the Santa Cruz property and the use of that property to fund payments to creditors under the amended plan. Specifically, Creditors noted that: (1) the Debtor is not (and has never been) represented by a Santa Cruz attorney by the name of Kathleen Burlington whose actual name appears to be Kathleen Brewington (and misspelled in the declaration); (2) the Debtor's mother did not die intestate and, in fact, passed with an estate plan consisting of the revocable living

[1] Creditors' claim is secured by real property located at 13500 Althea Way, Oak Run, California ("Property"). Claim No. 4 at Ex. B.

trust and pour over will which were provided to the Debtor in April 2019; (3) the Debtor has a brother; and (4) the Debtor is not an heir (much less the sole heir) of her mother's estate but, instead, was expressly disinherited by her mother. Dkt. 42 at ¶¶ 3-7; dkt. 43 at exs. A, B; dkt. 43 at ex. A, art. 4.D., pp.7-8; dkt. 43, ex. B at p.1.

Rather than respond to Creditors' objection, or apparently because of it, the Debtor withdrew her amended plan and motion to confirm it on October 10, 2019. Dkt. 48. Consequently, no confirmation hearing was held and the merits of Creditors' objection were not reached. Dkt. 52.

The Debtor has since taken no further action to confirm an amended plan. Creditors' motion followed on November 5, 2019. Dkts. 53-56.

Discussion

Section 1307(c) permits the court to convert or dismiss a Chapter 13 case, whichever is in the best interest of creditors and the estate, for cause. Cause includes unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). It also includes bad faith conduct. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999); *Ellsworth v. Lifescape Medical Assoc., P.C. (In re Ellsworth)*, 455 B.R. 905, 915 (9th Cir. BAP 2011). Both exist here.

First, in this court's view, the absence of a confirmed plan nearly eight months into this Chapter 13 case, and the absence of any further effort to confirm an amended plan during that period, is unreasonable delay by the Debtor prejudicial to creditors. *See* 11 U.S.C. § 1307(c).

Second, and more compelling, the Debtor has engaged in egregious bad faith conduct that warrants an exercise of the court's authority to dismiss or convert to prevent abuse and misuse of the bankruptcy process. The Debtor's knowing and intentional use of false sworn statements and misrepresentations to mislead the court, the Trustee, and creditors in the confirmation process is bad faith conduct and therefore cause for dismissal or conversion under § 1307(c). *See In re Stoller*, 351 B.R. 605, 622-23 (Bankr. N.D. Ill. 2006); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 373-74 (2007). Filing demonstrably false sworn statements is also sanctionable under Fed. R. Bankr. P. 9011, the court's inherent authority, and the local rules.

As noted above, months before the Debtor filed the August 14, 2019, declaration and the June 24, 2019, amended schedules the Debtor knew that she did not inherit the Santa Cruz property (or any other property) from her deceased mother's estate and, in fact, that she was expressly disinherited by her mother. So the false sworn statements and misrepresentations in both the declaration and the amended schedules to the effect that the Debtor alone inherited her mother's Santa Cruz property and that she could sell that property to fund payments to creditors under the amended plan were knowingly and intentionally made for no other apparent reason other than to make it appear as if the amended plan was feasible and thereby confirmable. It is also plausible that the Debtor sought to acquire the automatic stay for property in which she had absolutely no interest. And it is apparent that the Debtor's attorney filed both sworn documents without any sort of reasonable inquiry into the true facts. In any case, the Debtor's conduct, facilitated by her attorney, rises to the level of bad faith and abuse which constitutes cause and, additionally, is potentially sanctionable.

Having considered the totality of the circumstances, the court finds sufficient cause under § 1307(c) to convert or dismiss this case. And having further considered both options, the court concludes that dismissal rather than conversion is in the best interest of creditors and the estate. The delay here consisting of nearly eight months without a confirmed plan - and no further action taken to confirm a plan - is significant. That delay also comes with a price in that Creditors, who filed a proof of claim to which there has been no objection, continue to remain unpaid. Converting this case would also result in additional unnecessary delay and administrative expense. And conversion is of little, if any, benefit to unsecured creditors. The bar date has passed and unsecured claim are de minimus, *i.e.*, approximately $8,500.

The court further finds and concludes that the Debtor's above-described conduct is egregious and is not a proper prosecution of this Chapter 13 case making dismissal under § 109(g)(1) particularly appropriate under the circumstances of this case.

Therefore, for the foregoing reasons:

IT IS ORDERED that this case is ordered dismissed with the dismissal subject to the 180-day bar to refiling any single or joint case under 11 U.S.C. § 109(g)(1).

IT IS FURTHER ORDERED that any future single or joint bankruptcy case involving the Debtor shall be assigned to Department B.

IT IS FURTHER ORDERED that the court retains jurisdiction over the dismissed case to determine if the Debtor and/or her attorney should be further sanctioned pursuant to Fed. R. Bankr. P. 9011, the court's inherent authority, and/or the local rules.

IT IS FURTHER ORDERED that the Debtor and her attorney shall show cause, in writing filed by December 17, 2019, why they should not be sanctioned.

IT IS FURTHER ORDERED that a hearing on the court's order to show cause will be held on January 7, 2020, at 1:00 p.m. The Debtor and her attorney shall be present in person. Telephone appearances are not permitted.

The court will enter a minute order.

5. 19-25821-B-13 LARRY PERKINS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
DPC-1 Richard L. Jare — 11-6-19 [38]
Thru #6

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 plan and petition may have been filed in bad faith contrary to 11 U.S.C. § 325(a)(3) and (a)(7). Debtor Larry Perkins ("Debtor") had a pending bankruptcy case (no. 15-25308) when this case was filed. That earlier case received a discharge on October 15, 2019, approximately 28 days after the filing of the current case. Additionally, in the current case, the Debtor has valued a Rolling Green property at $560,000.00, which is the exact same value listed in the prior 2015 case and is contrary to the assertion of an increased value as made in a dismissed adversary case (no. 19-02109). This objection is also raised by creditor Aspen Properties Group, LLC, dkt. 29, holder of a second position deed of trust on the Rolling Green property.

Second, Schedule A/B filed in this case state that the Debtor now owns not only a 1995 Lincoln Navigator (listed in the Debtor's prior case, no. 15-25308) but a brand new 2018 Chevrolet Impala with only 4,400 miles on it. Dkt. 15. On Schedule D, Bank of America is listed as the creditor on the 2018 debt. Dkt. 15 at 14. The court is not aware of any order authorizing the Debtor to obtain post-petition financing in his prior case, no. 15-25308, and the confirmed plan in that prior case does not provide for such credit to be obtained. There was no Impala car payment provided for in the plan confirmed in the prior case, no. 15-25308, and given how tight the Debtor's budget was, leaving only $0.00 dollars for a 0.00% dividend for creditors with unsecured claims, the court is uncertain how the Debtor could have made the car payment beginning in 2018. The Debtor also does not show the amount of the car payment on Schedule J in this case, but on the statement of financial affairs states that the Debtor paid $1,370.00 to Bank of America in the 90 days prior to the filing of this case. The point is, the Debtor engaged in bad faith (and apparently fraud) in the prior case, which is relevant under the totality of the circumstances in this case, by confirming a plan in which he misrepresented his ability (or more accurately inability) to pay unsecured creditors and, at the same time, purchasing a new vehicle and making substantial payments on that vehicle without court authorization.

Third, feasibility depends on the granting of motions to value collateral for Aspen and Action Property Management Inc. To date, no motions to value have been filed. This objection is also raised by creditor Aspen Properties Group, LLC, dkt. 29, holder of a second position deed of trust on the Rolling Green property.

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

Fifth, the Debtor has 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 Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Sixth, the Debtor has failed to accurately fill out his bankruptcy documents pursuant to 11 U.S.C. § 521(a). There are contrary and inconsistent statements by the Debtor in his prior bankruptcy case and adversary complaint as discussed above. Specifically, the Rolling Green property is listed as having a value of both $705,000.00 and $560,000.00. Additionally, a Park River Oak property is listed as having a value of $325,000.00 and $280,000.00.

Seventh, the fee requested is inappropriate in this case since counsel for the Debtor has not appreciated what transpired in the prior case and adversary when preparing and filing the current case. Counsel should seek approval of fees pursuant to 11 U.S.C. § 329 and 330. Fed. R. Bankr. P. 2002, 2016, and 2017.

The plan filed September 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.

6. 19-25821-B-13 LARRY PERKINS
LBJ-1 Richard L. Jare

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY ASPEN PROPERTIES GROUP, LLC
10-15-19 [29]

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.

Aspen Properties Group, LLC ("Creditor") objects to confirmation of the plan for reasons addressed in the Chapter 13 Trustee's objection to confirmation. Dkt. 38. Therefore, the Creditor's objection is sustained for reasons stated at Item #5, DCN DPC-1.

The plan filed September 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.

7.	19-21347-B-13 PGM-4	FELICIA HUDSON Peter G. Macaluso	MOTION TO CONFIRM PLAN 10-28-19 [85]

No Ruling

8. 19-20648-B-13 BLG-3 — STEVEN-ANDREW FACTEAU — Chad M. Johnson — MOTION TO MODIFY PLAN — 10-24-19 [54]

Final Ruling

The motion has been 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). 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 will issue its ruling from the parties' pleadings.

The court's decision is to 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.

9. 19-23148-B-13 GEL-1 — MAYRA CERVANTES, Gabriel E. Liberman — OBJECTION TO CLAIM OF FIRST TECH FEDERAL CREDIT UNION, CLAIM NUMBER 1, 10-21-19 [27]

Tentative Ruling: The objection is brought pursuant to Local Bankruptcy Rule 3007-1(b)(2) since the hearing was set on 43-days' notice. When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to sustain the objection to Claim No. 1-1 of First Tech Federal Credit Union and the claim is allowed in the amount of $14,374.74.

Mayra Cervantes ("Debtor") requests that the court disallow the claim of First Tech Federal Credit Union ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $30,461.47. Objector asserts that this deficiency balance is for a repossessed 2017 Nissan Pathfinder that she did not purchase.

The Declaration of Mayra Cervantes states that in February 2017, she assisted her brother in the purchase of a 2017 Nissan Titan due to his poor credit history. Although Debtor was solely obligated for the loan, her brother was to make all monthly loan payments and pay for the maintenance, insurance, and registration of the vehicle. In May 2017, Debtor repeated this same process with her brother's wife for a 2010 Mazda CX7.

A year later in February 2018 and unbeknownst to the Debtor, her brother and sister-in-law traded in the vehicles, both of which had deficiency balances, for a 2017 Nissan Pathfinder and 2017 Nissan Versa, respectively. Debtor contends that she not present during the trade-in of the vehicles and did not sign the new purchase agreements. The Declaration of Rene Valentin, Debtor's brother, is filed in support of the motion and states that the Debtor was not present during the trade-in.

In March 2019, Debtor began receiving collection notices for the 2017 Nissan Pathfinder. Debtor did not understand why she was responsible for its deficiency balance since she had only signed for the Nissan Titan and Mazda. Debtor was subsequently informed by her father that her brother and sister-in-law had been, in fact, driving a new Nissan Pathfinder and Nissan Versa. Fearing the threats of legal action against her, Debtor filed for Chapter 13 relief on May 16, 2019.

Debtor contends that she should not be responsible for the deficiency balance of $30,461.47 for the now repossessed Nissan Pathfinder, but states that she agrees to be accountable to pay the deficiency balance of $14,374.74 for the traded-in Nissan Titan. Debtor requests that the general, unsecured claim of Creditor be allowed in the amount of $14,374.74.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that Debtor has satisfied her burden of overcoming the presumptive validity of the proof of claim. The Debtor has provided two declarations stating that the Debtor was not present for the purchase of the 2017 Nissan Pathfinder. The court

finds that the Debtor should not be held responsible for paying the deficiency balance of $30,461.47.

Based on the evidence before the court, the Creditor's claim is allowed in the amount of $14,374.74. The objection to the proof of claim is sustained.

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

The court will enter a minute order.

10. 17-21962-B-13 SUANNE GRANDERSON MOTION TO MODIFY PLAN
GEL-3 Gabriel E. Liberman 10-18-19 [71]

Final Ruling

The motion has been 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). 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 will issue its ruling from the parties' pleadings.

The court's decision is to 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.

11.	19-21664-B-13 AF-5	RESPAL/NENITA MENDOZA Arasto Farsad	MOTION TO CONFIRM PLAN 10-11-19 [88]

No Ruling

12. 19-26669-B-13 TAUJAI CAREY
RJ-2 Richard L. Jare

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION
11-19-19 [23]

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 Nissan Motor Acceptance at $8,250.00.

Debtor's motion to value the secured claim of Nissan Motor Acceptance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Nissan Sentra SV ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,250.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

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

Response

Chapter 13 Trustee David Cusick ("Trustee") filed a response stating that the court should consider that Creditor's proof of claim states a default amount of $10,828.44 and that this is not a secured portion from a claim that is bifurcated as stated in the Debtor's motion.

The Trustee also states that the Debtor has not filed missing documents pursuant to the court's order dated November 12, 2019. However, the Debtor did file additional schedules on November 26, 2019.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on January 16, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,388.23. Therefore, the 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 $8,250.00. *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.

13. 16-28370-B-13 RAFAEL BERRIOS
APN-1 Eric W. Vandermey

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-23-19 [40]

HYUNDAI LEASE TITLING TRUST
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.

Hyundai Leasing Titling Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a leased 2016 Hyundai Genesis (the "Vehicle"). The moving party has provided the Declaration of Gloria Greer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Greer Declaration states that the lease agreement matured on July 10, 2019, and the Debtor has surrendered possession of the property to Movant.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be a matured lease balance of $29,407.37 as stated in the Greer Declaration.

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 since the Debtor and the estate have not made post-petition payments, specifically paying the matured lease balance of $29,407.37. 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is 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.

14.	19-24685-B-13 TBG-2	EMILIA ARDELEAN Stephan M. Brown	MOTION TO CONFIRM PLAN 10-11-19 [37]

No Ruling

15.	19-22686-B-13 KSR-1	JESSE NIESEN Mark Shmorgon	MOTION TO DISMISS CASE 10-28-19 [33]

No Ruling

16. 19-26896-B-13 CHASTITY GIST
KH-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-8-19 [11]

2017-1 IH BORROWER, LP. VS.

CASE DISMISSED 11/22/19

Final Ruling

The case having been dismissed on November 22, 2019, the motion is denied as moot.

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

The court will enter a minute order.

17.	19-21705-B-13 DPC-1 **See Also #2**	TOBY TOLEN John G. Downing	CONTINUED MOTION TO DISMISS CASE 11-7-19 [102]

No Ruling

18.	15-26907-B-13 DPC-1	WILLIAM DOTY R. Kenneth Bauer	CONTINUED MOTION TO DISMISS CASE 11-12-19 [56]

No Ruling

19.	18-25046-B-13 DPC-1	LORENZO/CORRINA AGUILAR Candace Y. Brooks	CONTINUED MOTION TO DISMISS CASE 11-12-19 [51]

No Ruling

20.	15-26248-B-13 DPC-1	ANDREW/EMILY TWISS Mary Ellen Terranella	CONTINUED MOTION TO DISMISS CASE 11-12-19 [99]

No Ruling