

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 11, 2022 at 1:30 p.m.

1.	21-23900 -C-13	MAURICE RHODENNASH	OBJECTION TO CONFIRMATION OF
	RDG-1	Pro Se	PLAN BY RUSSELL D. GREER
			12-22-21 [23]

Thru #2

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 26.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not filed a credit counseling certificate evidencing that Debtor obtained the credit counseling mandated by 11 U.S.C. §109(h). Without a credit counseling certificate, the debtor is not eligible to be a debtor.
2. The debtor has not provided a copy of the debtor's most recent tax returns.
3. The debtor has not provided required pay advices.
4. The debtor claimed exemption under California and Federal law. The trustee's Objection to Exemptions is set for February hearing. If that Objection is sustained, the plan will fail the liquidation test.
5. Debtor's ability to make the plan payment of \$102.00 is contingent upon a monthly contribution of \$650.00 from a roommate. No declaration has been filed to show this contribution is likely.
6. Debtor's Schedule D lists secured claims for SHRA and Colleague Housing. Debtor's plan does not provide for these secured claims.

7. Debtor's plan is not feasible, as it fails to indicate the percentage to be paid to general unsecured creditors or a plan term.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on January 3, 2022. Dkt. 34. The Opposition makes some suggestions in a proposed order format that demonstrate efforts to prosecute this Chapter 13 case.

Among those suggestions is that an Amended Plan and Schedules will be filed.

DISCUSSION

The trustee's Objections are well-taken, and the debtor's Opposition indicates a consensus that an Amended Plan and Schedules must be filed. The debtor also needs to file a credit counseling certificate and multiple 11 U.S.C. § 521 documents.

Therefore, the Objection is sustained.

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

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

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

IT IS ORDERED that the Objection is sustained.

2. [21-23900](#)-C-13 MAURICE RHODENNASH
[TMS-1](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RICHARD L. MCATEE AND
HERTA L. MCATEE
12-27-21 [[32](#)]

Tentative Ruling:

The Notice indicates the Objection has been set on Local Rule 9014-1(f) (2) notice which requires 14 days' notice.

However, no proof of service has been filed to demonstrate that the Objection was served on anyone.

The Objection to Confirmation of Plan is overruled without prejudice.

Creditors Richard McAtee and Herta McAtee ("Creditor") filed this Objection on the basis that the case was filed in bad faith, the plan does not provides for the full value of Creditor's claim, and the plan is not feasible.

The debtor filed an Opposition on January 3, 2022. Dkt. 34. The Opposition makes some suggestions in a proposed order format that demonstrate efforts to prosecute this Chapter 13 case. Among those suggestions is that an Amended Plan and Schedules will be filed.

Despite both parties agreeing a new plan must be filed, no evidence that the Objection was served has been filed. Therefore, the Objection is overruled without prejudice.

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

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

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

IT IS ORDERED that the Objection is overruled without prejudice.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 14.

The Motion to Extend the Automatic Stay is denied.

The debtor Maria del Socorro Ortiz ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on November 18, 2021, after she failed to cure a substantial delinquency or file a modified plan. Order, Bankr. E.D. Cal. No. 20-25492, Dkt. 127. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

The Declaration supporting the Motion explains that the change in circumstances between this and the most recent case is that this is no longer a joint case with the debtor's spouse, Rene Ortiz. The Declaration also gives a summary of the debtor's current income and expenses.

CREDITOR'S OPPOSITION

Creditor Yuli Hu ("Creditor") filed an Opposition on December 30, 2021, arguing that the debtor has not sufficiently explain why her prior case failed, and has not presented evidence showing this case will be any more successful. Dkt. 16.

DEBTOR'S REPLY

Debtor filed a Reply and supplemental declaration on January 7, 2022. Dkts. 31-33. The supplemental pleadings reiterate that the prior case failed because the debtor's spouse was involved, and that the present case will be successful because the Debtor filed without Rene Ortiz.

Debtor also filed the Declaration of Ryun Ortiz, one of her sons, to present testimony that he and two of his brother can contribute money towards the Debtor's plan and will if necessary.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that

the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

DISCUSSION

The Creditor's arguments are well-taken. The Debtor's Motion concludes that good cause exists to grant the Motion without explaining what that good cause is.

The Debtor's pleadings indicate the previous case failed because the debtor's spouse had a "manic attack," and the present case will succeed because it is not a joint-case.

The explanation provides zero detail as to how the "manic attack" caused a \$13,372.00 payment delinquency in the prior case, whether that missing money was used to purchase goods and services, or gambled away, or used to pay unexpected expenses, etc.

Furthermore, Debtor's Reply is disingenuous. It states the present plan is being filed "alone" with support from Debtor's 3 sons. But, the plan still centrally relies on income from the debtor's non-filing spouse. In fact, it's unclear whether Debtor's alleged social security income of \$2,080 a month is her own, since in the prior case it was indicated Rene Ortiz was receiving \$2,028.00 in social security income. Compare Schedule I, Dkt. 43, with Case No. 20-25492, Schedule I, Dkt. 1.

And, the \$1,105 monthly contribution from the Debtor's adult son is less than the \$1,800 monthly contribution from the Debtor's adult children

in the prior case. *Id.*

Without knowing what specifically caused the delinquency in the prior case, it is impossible to know the problem has been remedied. The non-filing spouse may just as easily divert funds in this case as in the prior case.

On the sparse detail herein provided, the Debtor has not carried her burden to rebut the presumption of bad faith. Therefore, the Motion is denied.

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

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

The Motion to Extend the Automatic Stay filed by Maria del Socorro Ortiz having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

4. [21-22511](#)-C-13 JOANNE ASPIRAS
[RDG-2](#) Peter Cianchetta

CONTINUED MOTION TO DISMISS
CASE
11-8-21 [[27](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dkt. 30.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion to Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the Chapter 13 plan on September 14, 2021.

A review of the docket confirms the proposed Chapter 13 plan was denied confirmation, and no plan is set for confirmation hearing. Dkts. 23, 24.

Failure to confirm a plan constitutes evidence of unreasonable delay by the debtor that is prejudicial to creditors.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion, is in the best interest of creditors and the Estate.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 56 days' notice was provided. Dkt. 145.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Paula Michelle Hutchinson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 143) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 30.

The Objection to Confirmation of Plan is XXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 Meeting has not been concluded.
2. The debtor's Plan provides for total priority claims in the amount of \$2.00. The Internal Revenue Service has filed a proof of claim with a priority portion of \$48,090.78.
3. 11 U.S.C. §1325(a)(9) requires the debtor to have filed all applicable tax returns for the four years prior to filing. The debtor has testified at her 341 meeting of creditors that she has not filed income tax returns since approximately 2016.
4. The trustee is uncertain the wet signature on her plan (Dkt. 13) is that of the debtor in this case. Although the wet signature is not fully legible, it does not appear to be the name of the debtor.

Additionally, the trustee questions the debtors' capacity in this case. The debtor seemed unaware of details of the case at the 341 Meeting, and the debtor has a brother with power of attorney. The trustee also questions the debtor's capacity based on lucidity observed at the 341 Meeting.

DISCUSSION

Before addressing issues with the plan, the issue of whether the debtor has capacity must be resolved.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to

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

IT IS ORDERED that the Objection is ~~xxxxxxxxxx~~

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 49 days' notice was provided. Dkt. 27.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify filed by the debtor, Jeremy Eugene Wygal, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 22) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 83.

The Motion to Incur Debt is granted.

The debtor filed this Motion seeking authority to incur debt in the form of a home refinance to lower the debtor's interest rate, cure prepetition arrearages, and complete the Chapter 13 plan.

The proposed financing is in the principal amount of \$439,560.00, paid at 4.5 percent interest over a 30 year term. Monthly payments are proposed to be \$2,320.49.

The trustee filed a Response on January 6, 2021, noting that there is no estimated closing statement attached which could help demonstrate the loan funds are sufficient to complete the plan. The trustee also requests certain language be added to the order granting the Motion.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Therefore, the Motion is granted.

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

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

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

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

9. [21-23748](#)-C-13 ELISA VALENZUELA
[RDG-1](#) Julius Cherry

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSEL D. GREER
12-20-21 [[14](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 17.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the debtor has not appeared at the 341 Meeting.

DISCUSSION

A review of the docket shows the 341 Meeting has been continued twice.

The debtor did not attend the continued 341 Meeting on January 6, 2022, even though this Objection was filed December 20, 2021.

Appearance is mandatory. See 11 U.S.C. §§ 343 & 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

IT IS ORDERED that the Objection is sustained.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 13.

The Motion to Dismiss is ~~XXXXXX~~

The debtors Michele Bettega and Sharon Bettega filed this Motion pursuant to 11 U.S.C. § 1307(b) seeking voluntary dismissal. The impetus for the Motion is that the debtor Sharon Bettega recently experience a pay decrease due to her illness, which has prevented the debtors from proposing a feasible plan.

DISCUSSION

The debtors filed this Motion pursuant to 11 U.S.C. § 1307(b), which provides:

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

This case was in fact converted under section 706 on October 12, 2021. Dkt. 19.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

IT IS ORDERED that the Motion to Dismiss is ~~XXXXXX~~

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 66.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify filed by the debtor, Tema Kay Robinson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 63) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

12. [21-22756](#)-C-13 GARRETT WILLIS
[RDW](#)-1 Carl Gustafson

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-7-21 [[21](#)]

WESTLAKE FINANCIAL SERVICES
VS.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

13. [18-22164](#)-C-13 DAWN BARKLEY MOTION TO MODIFY PLAN
[MJD](#)-5 Matthew DeCaminada 12-6-21 [[74](#)]

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 79.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify filed by the debtor, Dawn Marie Barkley, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 78) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 59 days' notice was provided. Dkt. 28.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Amended Plan is granted.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 22) filed on November 9, 2021.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Jaswinder Kaur Sandhu, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan (Dkt. 22) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

15. [21-23870](#)-C-13 HEATHER/PATRICK NEVIN
[AP-1](#) Seth Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY PLANET HOME LENDING, LLC
12-22-21 [[16](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is overruled.

Creditor Planet Home Lending, LLC ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan does not provide for Creditor's prepetition arrearages, which total \$31,231.48.

DEBTOR'S RESPONSE

The debtor filed a Response on January 5, 2022. Dkt. 19. The Response represents that a Partial Claim Workout Agreement was executed prepetition, on November 4, 2021, which defers the pre-petition arrears in the amount of \$27,083.54. The debtor notes further that Paragraph 7 of that Agreement specifically represents the Agreement brings the loan current.

DISCUSSION

The plan terms control what the plan provides. One of those plan provisions, at Section 3.02, is that "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Dkt. 3.

Creditor, without mentioning it in any supplemental filing to the court, appears to have withdrawn its Objection by filing Amended Proof of Claim, No. 20-2, on January 6, 2022. Said Proof of Claim states:

Amount necessary to cure any default as of the date of the petition: \$ 0.00**

The Creditor conceding there are no prepetition, and it appearing the plan complies with 11 U.S.C. §§ 1322 and 1325(a), the Objection is overruled.

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

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

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

IT IS ORDERED that the Objection is overruled, and the debtors' Chapter 13 Plan (Dkt. 3), is confirmed. 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.

16. [21-23080](#)-C-13 EVANGELINE WILLIAMS
[JM-1](#) Mark Shmorgon

MOTION FOR RELIEF FROM
CO-DEBTOR STAY
12-8-21 [[20](#)]

LENDMARK FINANCIAL SERVICES,
LLC VS.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 25.

The Motion for Relief from the 11 U.S.C. § 1301 co-debtor stay is granted.

Lenmdmark Financial Services, LLC ("Movant"), filed this Motion seeking relief from the 11 U.S.C. § 1301 co-debtor stay as to Keith Buford.

The Motion provides very sparse detail about the underlying facts. It appears from reviewing the loan agreement, attached to Proof of Claim, No. 2, that the debtor Evangeline Williams and Keith Buford entered an agreement for a \$2,847.62 loan paid at 35.95 percent interest over 36 months. No date is listed on the agreement, but the copy of the agreement filed was generated August 25, 2021 (prepetition, but on the heels of the filing date). The agreement indicates the first payment of \$149.41 was due October 1, 2021.

Despite the Motion and supporting pleadings identifying Movant as a "secured creditor" and with a "secured claim," there is no collateral for the loan. The Proof of Claim concedes the claim is unsecured.

The Motion argues relief from stay should be granted because (1) Keith Buford received the consideration for the Movant's claim; (2) the debtor's confirmed Chapter 13 plan does not provide for any payment to Movant; and (3) Movant will be irreparably harmed should the co-debtor stay continue because the plan provides for no payment to Movant.

DISCUSSION

The Confirmed Chapter 13 Plan provides the following:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to

exercise its rights against any nondebtor.

Dkt. 3.

While the stay was terminated as to Class 3 and 4 claims, it does not speak to Class 7. By operation of law the co-debtor stay terminates when the case is closed, dismissed, or converted to a case under chapter 7 or 11. 11 U.S.C. § 1301(a)(2).

The court finds that relief from stay is warranted (1) under 11 U.S.C. § 1301(c)(1) because Keith Buford was entitled to the loan funds, and thus received the consideration for the claim; under 11 U.S.C. § 1301(c)(2) because the confirmed plan does not provide for anything to be paid to Movant's claim; and under 11 U.S.C. § 1301(c)(3) because Movant's interest would be irreparably harmed by continuation of such stay since Movant cannot pursue collection or seek a judgment against Keith Buford until the stay is lifted.

Therefore, the motion is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Lendmark Financial Services, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 80.

The Motion to Incur Debt is ~~xxxxxx~~.

The debtors filed this Motion seeking authority to incur debt to purchase a new 2021 Hyundai Sonata, or a similar new vehicle, since their 2015 Hyundai Sonata was in a total loss collision.

The proposed financing is in the principal amount of \$23,298.75, paid at 14.9 percent interest over a 72 month term. Monthly payments are proposed to be \$495.04.

The debtors argue in their Motion that a new model vehicle is sought to avoid maintenance and repair expenses, and to cut mileage costs. The debtors represent they will be able to afford the new payment, which is slightly more than double the debtors' car payment under the Modified Plan (Dkt. 42), because the debtors' income has increased and expenses have decreased.

DISCUSSION

During the prior hearing the debtors' counsel requested a continuance to see if the interest rate on the prospective new debt could be brought down to 10 percent or less.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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

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

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

IT IS ORDERED that the Motion is ~~xxxxxxxxxxxx~~

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 19.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 4) filed on September 20, 2021.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Kenneth Joe Thompson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Chapter 13 Plan (Dkt. 4) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 77.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify filed by the debtor, Brenda Ann Jacobson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 73) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 137.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm Modified Plan is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify filed by the debtors, Brandon Coy McBroom and Tracy Lynne McBroom, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtors' Modified Chapter 13 Plan (Dkt.133) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtors' counsel 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 trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f) (3) notice via an order shortening time. Dkts. 43, 44.

The Motion to Incur Debt is granted.

The debtors Jesse Darwin Kesler and Rebecca Kesler filed this Motion seeking authority to incur debtor in order to purchase real property located at 5425 Center Pine Lane, Williamsville, New York.

The proposed financing is in the principal amount of \$560,000.00, paid at 3.375 percent interest over a 30 year term. Monthly payments are proposed to be \$3,543.00.

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

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

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

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

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.