

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 23, 2021 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1.	21-20009 -C-13	CYNTHIA ARIETA	MOTION TO VALUE COLLATERAL OF
	RJ-1	Richard Jare	MECHANICS BANK AUTO FINANCE
			1-19-21 [13]

Final Ruling: No appearance at the February 23, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 14.

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 Value is granted.

The debtor filed this Motion seeking to value the portion of Mechanic's Bank Auto Finance's ("Creditor") claim secured by the debtor's property commonly known as 2011 Ford Flex (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$8,000.00. Declaration, Dckt. 15.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in 2015, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a) (9) (hanging paragraph).

Upon review of the record, the court finds the value of the Property is \$8,000.00. Therefore, Creditor's secured claim is determined to be \$8,000.00. 11 U.S.C. § 506(a).

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

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

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Mechanic's Bank Auto Finance ("Creditor") secured by property commonly known as a 2011 Ford Flex (the "Property") is determined to be a secured claim in the amount of \$8,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

2. [18-27311](#)-C-13 KARLA ANTONETTE GAMA
[RDG-1](#) Pauldeep Bains

OBJECTION TO CLAIM OF SUSTREET
ENERGY GROUP LLC, CLAIM NUMBER
11-1 & 11-2
1-19-21 [[86](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 88.

The Objection to Proof of Claim is sustained, and the claims are disallowed in their entirety.

The Chapter 13 trustee filed this Objection arguing that Proofs of Claim, Nos. 11-1 and 11-2, filed by Sustreet Energy Group LLC were filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 29, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 11. The Proofs of Claim subject to this Objection were filed December 16, 2020 and December 29, 2020.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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 Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Numbers 11-1 and 11-2 of Sustreet Energy Group LLC is sustained, and the claims are disallowed in their entirety.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 53.

The Motion to Modify Plan is granted.

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 52) filed on January 19, 2021.

The trustee filed an Opposition February 3, 2021, arguing that the plan is not feasible because creditor Aarons LLC filed four secured proof of claims which are not provided for in the plan. Dkt. 56.

The debtor filed a Reply on February 8, 2021, asserting that the four claims are based on lease agreements for furniture. The debtor argues that Section 4.02 provides for the lease agreements to be rejected, but also notes the debtor is amenable to listing the claims as Class 3.

DISCUSSION

The plan terms provide that any executory contract not listed in Section 4.02 be rejected. Each of creditor Aaron's LLC's claims are executory contracts which the debtor has chosen to reject—such does not pose an issue to the feasibility of the plan here proposed. Therefore, the trustee's sole ground for opposing confirmation has been addressed.

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 Plan filed by the debtor, Joe Garcia, 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 filed on January 19, 2021 (Dckt. 52) 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 February 23, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dckt. 113.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The hearing on the Motion for Contempt is continued to
March 23, 2021, at 1:30 p.m.**

The debtor Marilyn Theresa Paventy ("Debtor") filed this Motion seeking (1) a determination that creditor USDA Rural Housing Service ("USDA") is in contempt for violation of this court's order confirming Chapter 13 plan and for violation of the discharge stay; (2) damages of greater than \$110,000.00; and (3) an injunction preventing further violation.

Debtor argues the court on June 2, 2015, disallowed \$22,659.00 of the USDA's claim, leaving \$32,882.36 to be paid through the Chapter 13 plan. Dkts. 42, 44; Proof of Claim, No. 6-1. The confirmed Chapter 13 Plan and First Modified Plan provided for that claim. Dkts. 5, 31, 61, 88.

The First Modified Plan was completed, and discharge was entered April 20, 2020. Dckt. 100.

Debtor asserts that despite USDA's secured claim being paid in full and the remainder being discharged, that USDA continued collection efforts. Those collection efforts are detailed through Debtor's testimony and numerous written correspondence Debtor has filed as exhibits. Dkts. 109, 110.

The exhibits (Dckt. 110) show that USDA seeks to collect the following charges:

\$11,253.35	principal
\$1,222.06	interest
\$1,533.04	fees
\$205.70	late charge
\$0	escrow
\$22,659.00	subsidy

The Final Report and Account filed by the Chapter 13 trustee attests that USDA was paid \$28,137.78 in principal, \$4,744.58 towards arrearages,

and \$4,340.81 in interest. Dckt. 92.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020; Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1189 (9th Cir. 2011).

A bankruptcy judge has the authority to issue a civil contempt order. Caldwell v. Unified Capital Corp. (In re Rainbow Magazine), 77 F.3d 278, 283-85 (9th Cir. 1996). The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395 (1990); Miller v. Cardinale (In re DeVille), 631 F.3d 539, 548-49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. Peugeot v. U.S. Trustee (In re Crayton), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see In re Lehtinen, 564 F.3d at 1058.

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. Bassett v. Am. Gen. Fin., Inc. (In re Bassett), 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

USDA did not file written opposition to the Motion.

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 for Contempt filed by the debtor Marilyn

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

IT IS ORDERED that hearing on the Motion for Contempt is continued to March 23, 2021, at 1:30 p.m.

5. [20-24625](#)-C-13 RICHARD PATTON
[RDG-1](#) Muoi Chea

OBJECTION TO CLAIM OF
BRICKHOUSE OPCO I LLC, CLAIM
NUMBER 18
1-19-21 [[20](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 22.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 18, filed by Brickhouse Op Co I LLC was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is December 11, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 11. The Proof of Claim subject to this Objection was filed December 16, 2020.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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 Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 18 of Brickhouse Op Co I LLC is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 21 days' notice was provided. Dckt. 124.

The Motion to Sell is granted.

The debtor Kevona Brown filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 7439 Brandamore Court, Elk Grove, Ca ("Property").

The proposed purchasers of the Property are Long Vo and Thuy Ngyuyen, and the proposed sale price is \$500,000.00.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~xxxxxxxxxxxxxxxxxx~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. 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 Sell Property filed by the debtor Kevona Brown ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Long Vo and Thuy Ngyuyen or nominee, the Property commonly known as 7439 Brandamore Court, Elk Grove, CA ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$500,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 123, and as further provided in this Order.
- B. The sale proceeds shall first be applied to

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closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

- C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to Movant. Within fourteen days of the close of escrow, the Movant shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

7. [20-25543](#)-C-13 LEROY/THERESA LAMBERT
[RDG-1](#) Len ReidReynoso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-25-21 [[12](#)]

Final Ruling: No appearance at the February 23, 2021 hearing is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Confirmation of Plan is overruled as moot.

The Chapter 13 trustee filed this Objection To Confirmation on January 25, 2020. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 18, 21.

Therefore, 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 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 overruled as moot.

8. [19-20857](#)-C-13 JOHN STANTON
[AP-1](#) Pauldeep Bains

CONTINUED MOTION FOR RELIEF
FROM CO-DEBTOR STAY
9-28-20 [[61](#)]

BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. VS.

Final Ruling: No appearance at the February 23, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 50 days' notice was provided. Dckt. 62.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion for Relief from the Automatic Stay is granted.

Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's real property known as 5918 4th Avenue, Sacramento, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent in property taxes, and none of the borrowers on the note are residing at the Property as required.

DEBTOR'S RESPONSE

Debtor's counsel filed a Response on October 20, 2020. Dckt. 80. Debtor's counsel reports that there was a plan to pay the delinquent property taxes, but that the debtor passed away on August 4, 2020, before the payment could be made.

Debtor's counsel notes that the debtor's daughter has a pending motion seeking to substitute in as a representative, that the debtor is current on Plan payments, and that the debtor's family is seeking a reasonable time to sell the Property.

DISCUSSION

The prior hearing was continued to allow the Debtor to pursue sale of the Property.

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 Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5918 4th Avenue, Sacramento, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Mary Elizabeth Stanton of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

Final Ruling: No appearance at the February 23, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dckt. 30.

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 for Authority to Use Cash Collateral is granted.

The Chapter 13 debtors Anthony Frank Faulconer and Nanci Iwalani Faulconer ("Debtor") filed this Motion seeking authority to use \$8,216.00 in cash collateral.

Creditor Carfinance Capital ("Creditor") has a claim secured by the Debtor's 2011 Ford Fusion. That vehicle was involved in a collision resulting in insurance proceeds of \$8,216.00 (the "Cash Collateral").

The Debtor seeks authority to use the Cash Collateral to buy a new vehicle for the Debtor's transportation needs. The Debtor represents that having a replacement vehicle is necessary to an effective reorganization. The Debtor proposes granting a replacement lien to the Creditor in the new vehicle.

DISCUSSION

11 U.S.C. §§ 363(c)(2) and 1303 allow Debtor to use cash collateral with either the express consent of the creditor, or court authorization. 11 U.S.C. § 363(e) requires that adequate protection be provided as a condition to use of cash collateral.

Debtor has shown that the proposed use of cash collateral is in the best interest of the Estate, because obtaining a new means of transportation is necessary to Debtor's reorganization. Creditor's claim is adequately protected by the grant of a replacement lien in the new vehicle. Therefore, the Motion is granted.

The court shall issue an 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 Authority to Use Cash Collateral filed by Chapter 13 debtors Anthony Frank Faulconer and Nanci Iwalani Faulconer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. Debtor is authorized to use \$8,216.00 in insurance proceeds, which constitute the cash collateral of creditor Carfinance Capital ("Creditor"), to purchase a motor vehicle.

IT IS FURTHER ORDERED that Creditor is given a replacement lien in the purchased motor vehicle in the same priority, validity, and extent as existed in the cash collateral expended.

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 35 days' notice was provided. Dckt. 128.

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 Sell is granted.

The debtors Frank Mooney and Tina Mooney filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 6832 Hickory Ave., Orangevale, CA ("Property").

The proposed purchasers of the Property are Leland Montgomery and Erin Montgomery, and the proposed sale price is \$420,000.00.

The sale is represented to be a short sale.

Deutsche Bank National Trust Company, as trustee, on behalf of the holders of the Impac Secured Assets Corp., Mortgage Pass-Through Certificates Series 2006-4 ("Creditor") filed responses indicating consent to the sale so long as the order granting the Motion provide:

1. Creditor's Claim shall be paid in accordance with any short sale approval authorized by Creditor;
2. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's Claim is paid in accordance with any short sale approval authorized by Creditor.

Dkts. 132, 138. The responses also indicate the sale proceeds must be received by March 22, 2021.

The debtor filed a Response requesting the proposed language be added to the order granting the Motion. Dkt. 134.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. 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 Sell Property filed by the debtors Frank Mooney and Tina Mooney ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Leland Montgomery and Erin Montgomery or nominee, the Property commonly known as 6832 Hickory Ave., Orangevale, CA ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$420,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 126, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to Movant. Within fourteen days of the close of escrow, Movant shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
- E. The claim of Deutsche Bank National Trust Company, as trustee, on behalf of the holders of the Impac Secured Assets Corp., Mortgage Pass-Through Certificates Series 2006-4 ("Creditor") shall be paid in accordance with any short sale approval authorized by Creditor.

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F. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's Claim is paid in accordance with any short sale approval authorized by Creditor.

11. [19-26763](#)-C-13 JOANNE PAYNE
[RDG-1](#) Gabriel Liberman

OBJECTION TO CLAIM OF COUNTY OF
SACRAMENTO UTILITIES, CLAIM
NUMBER 4
1-19-21 [[18](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 20.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 4, filed by County of Sacramento Utilities was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 8, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 11. The Proof of Claim subject to this Objection was filed June 15, 2020.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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 Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 4 of County of Sacramento Utilities is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dckt. 111.

The Motion to Modify Plan is denied.

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 110) filed on January 8, 2021.

The trustee filed an Opposition (Dkt. 115) on February 3, 2021, opposing confirmation on the following grounds:

1. The plan mathematically requires a payment of \$1,459.00 from January 2021 through January 2025, which is higher than the proposed \$1,300 payment.
2. The plan relies on the debtors completing their trial loan modification and obtaining approval of the permanent loan modification.
3. The plan by its terms is a 62 month period, which contradicts section 2.03's 60 month limitation.
4. The monthly dividend for the Class 2 claim of Prestige Financial Services must be \$555.57, which is higher than the proposed \$456.17 dividend.
5. The monthly dividend for the Class 2 claim of County of Sacramento Utilities must be \$92.03, which is higher than the proposed \$30.47 dividend.
6. Debtors' plan no long provides for creditor Heritage Community Credit Union's secured claim because the collateral was totaled. The trustee is unsure whether the insurance proceeds have been applied to that creditor's claim.

DISCUSSION

The aggregate of the grounds for opposition all cast doubt as to the plan's feasibility. The plan not proposing a payment sufficient to cover what is mathematically required by the plan terms demonstrate the plan is not feasible, which is grounds to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtors, Vikash Singh and Sanjani Singh, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

13. [20-25280](#)-C-13 JAQUAY KNOX
[RDG-1](#) James Keenan

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D GREER
1-12-21 [[14](#)]

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 28 days' notice was provided. Dckt. 17.

The Objection to Confirmation of Plan is XXXXXXXX

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

1. Debtor's Schedule I at Line 5(a) indicates Tax, Medicare and Social Security deductions of \$3,122.00. This is contradictory to the information on Debtor's pay advices. The trustee requests the debtor provide a copy of debtor's January 2021 pay advices

2. Debtor's 2019 Federal and State income tax returns evidence taxes due of \$8,281.00 to the IRS and \$2,804.00 to the Franchise Tax Board. Debtor has admitted at her 341 meeting of creditors that she has recently adjusted her tax withholdings. Trustee requests that Debtor be required to file all Federal and State tax returns no later than April 15th of each year, provide copies of these returns to him not later than April 30 of each year for the duration of the plan, and modify the plan if appropriate.

DISCUSSION

At the prior hearing, the parties requested a continuance to allow debtor to receive and provide to the trustee current pay advices.

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 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 XXXXXXXX

14. [20-20083](#)-C-13 DAVID COX
[RDG-1](#) Mikalah Liviakis

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 9
1-21-21 [[18](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 33 days' notice was provided. Dckt. 20.

The Objection to Proof of Claim is XXXXXX

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 9, filed by Internal Revenue Service was filed late and should be disallowed.

The deadline for government entities to file proofs of claim in this case is July 6, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed November 13, 2020.

DEBTOR'S RESPONSE

The debtor filed a Response on February 7, 2021. Dkt. 21. The debtor argues the Creditor's claim should be allowed because it was accurately forecasted in the Chapter 13 plan, and because the treatment does not change the distribution to unsecured creditors.

DISCUSSION

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 Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 9 of the Internal Revenue Service is xxxxxxxxxx

15. [20-23686](#)-C-13 ANDREW NUNES
[RDG-1](#) Stephan Brown

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-11-21 [[39](#)]

Final Ruling: No appearance at the February 23, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 43 days' notice was provided. Dckt. 42.

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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, Russell Greer ("Trustee") objects to the debtor Andrew Michael Nunes's ("Debtor") claimed exemptions under California Code of Civil Procedure § 703.140(b) because no spousal waiver has been filed as required by § 703.140(a) (2).

A review of the docket shows the waiver has yet to be filed. 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 Claimed Exemptions filed by Chapter 13 Trustee, Russell Greer ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions under California Code of Civil Procedure § 703.140(b) are disallowed in their entirety.

16. [21-20087](#)-C-13 PORSCHIA PITTS
[LHL](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-22-21 [[11](#)]

NICHOLAS DIAZ 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 29 days' notice was provided. Dckt. 16.

The Motion for Relief from the Automatic Stay is granted.

Nicholas Diaz ("Movant") filed this Motion seeking relief from the automatic stay with respect to the real property commonly known as 10212 Coloma Road, Rancho Cordova, California ("Property"), to allow an unlawful detainer action to be litigated in state court.

Movant argues relief is warranted under 11 U.S.C. § 362(d)(1) and (d)(2) because the debtor does not have an ownership interest in or a right to maintain possession of the Property. Declaration, Dckt. 13. Movant also argues the case was filed for no other purpose than to delay the unlawful detainer action and Movant's efforts to regain possession of the Property.

Movant also argues the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is warranted because the case was only filed to delay.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on February 19, 2021. Dkt. The debtor requests a continuance of 4 weeks to allow her to prepare and submit her filing documents (e.g. a Chapter 13 plan, Statement of Financial Affairs, etc.). The debtor notes the extra time is necessary given COVID-19 and civil unrest which have limited access to necessary resources.

DISCUSSION

Upon review of the record, the court finds Movant has presented a colorable claim for title to and possession of this real property. Cause for relief exists pursuant to 11 U.S.C. § 362(d)(1) to allow the unlawful detainer action to be litigated on the merits in a court of competent jurisdiction.

While the debtor has requested additional time to file documents, those documents are not dispositive to the present Motion, and would not support a finding that there is no cause for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an 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 Nicholas Diaz ("Movant") 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 10212 Coloma Road, Rancho Cordova, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

17. [21-20094](#)-C-13 MARK PARDO AND KATHLEEN MOTION TO VALUE COLLATERAL OF
[PLC-3](#) RAPISURA-PARDO WELLS FARGO DEALER SERVICES
Peter Cianchetta 1-22-21 [[10](#)]

No 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 32 days' notice was provided. Dckt. 14.

The Motion to Value is ~~xxxxxx~~.

The debtor filed this Motion seeking to value the portion of Wells Fargo Dealer Service's ("Creditor") claim secured by the debtor's property commonly known as a 2007 Lexus GS 350 (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$7,657.00. Declaration, Dckt. 13.

Creditor filed an Opposition on February 9, 2021 (Dkt. 20), disputing the Debtor's valuation and asserting that the Property is worth \$10,000.00, which valuation is supported by a NADA Guide.

DISCUSSION

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Matter must be set for evidentiary hearing.

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 Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. [20-25497](#)-C-13 JACK KELLUM
[JM-1](#) Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY ONEMAIN FINANCIAL
GROUP, LLC
1-28-21 [[13](#)]

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 26 days' notice was provided. Dckt. 16.

The Objection to Confirmation of Plan is overruled.

Creditor Onemain Financial Group, LLC ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan does not properly provide for Creditor's claim because the collateral is not correctly identified in the plan.

DEBTOR'S RESPONSE

Debtor filed a Response on February 9, 2021. Dckt. 19. Debtor notes the Creditor's claim is provided for as a Class 3, and recommends correcting a typo misidentifying the collateral in the order confirming the plan.

DISCUSSION

The objecting Creditor's primary basis for opposing confirmation is the misidentification of its collateral in the plan. With the proposed changes in the order confirming plan, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, 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 Objection to the Chapter 13 Plan filed by Onemain Financial Group, LLC, 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 debtor's Chapter 13 Plan filed on December 10, 2020 (Dckt. 2), 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.