

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

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

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

1.	<u>14-29018</u> -C-13 <u>EBF</u> -2	MARILYN PAVENTY Eamonn Foster	CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR DAMAGES, AND AN INJUNCTION AGAINST USDA RURAL HOUSING SERVICE 12-24-20 [<u>107</u>]
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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 33 days' notice was provided. Dckt. 113.

The Motion for Contempt is XXXXXXXXXX

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 that on June 2, 2015, the court disallowed \$22,659.00 of 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, 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.

USDA'S OPPOSITION

USDA filed an Opposition on March 9, 2021. Dkt. 122. USDA argues that the issue here is not the disallowed subsidy, but the interest rate on USDA's claim. The proof of claim ("POC") provided for 8.75% interest, and the debtor never objected to that interest rate. While the amended chapter 13 plan provided for 4.75% interest, the terms of the confirmed plan provide that the POC controls treatment of the claim, meaning USDA's claim was not entirely paid, the lien was not extinguished, and USDA was entitled to pursue recovery on its secured claim in lieu of foreclosure on the collateral.

USDA argues further 11 U.S.C. § 1322(b)(2) barred the debtor from modifying its rights of its claim secured only by debtor's principal residence. USDA also argues that for the debtor to strip its lien, Federal Rules of Bankruptcy Procedure 3007 and 7001 required an adversary proceeding be filed.

USDA notes that notices for the motion to confirm the chapter 13 plan and the objection to its POC were not made on the U.S. Attorney. USDA also notes there is no codebtor discharge, meaning it was not barred from seeking collection on its secured claim.

USDA also argues its collection efforts were objectively reasonable, and that the debtor has not demonstrated any contempt remedy to be appropriate here.

USDA requests that if the court disagrees, it be allowed additional time to investigate its post-confirmation activity as alleged by the debtor.

DEBTOR'S REPLY

The debtor filed a Reply on March 12, 2021, Dkt. 124. The debtor argues that the plan in Section 3.2 provides that the POC controls the amount and classification, but is silent as to the interest rate.

Debtor's counsel also argues the plan should be read in a light most favorable to the drafter, which here should result in finding an interest rate of 4.75% applies as the debtor intended.

Debtor represents that USDA was served the plan, and acted in accordance with the plan.

Debtor also notes that no accounting has been filed in response showing how USDA actually applied payments.

DISCUSSION

The debtor argues that USDA cites the Modified Plan (Dkt. 61) and not the initially confirmed Chapter 13 Plan (Dkt. 5) because the latter does not contain the same language. That representation of the facts is incorrect—Section 3.2 of the Modified Plan is identical to Section 2.4 of the initial plan.

The debtor also argues “as USDA states, the plan could be read in light most favorable to the drafter.” This is a misunderstanding of USDA’s argument and an incorrect recitation of California contract law, which provides that if uncertainty in a contract persists, language shall be interpreted “most strongly” against the party who caused the uncertainty (i.e. the party who drafted the contract, the debtor herein). CAL. CIV. CODE § 1654; In re Patel, 621 B.R. 245, 252 (Bankr. E.D. Cal. 2020).

The issue up for interpretation is whether the proof of claim controls the interest rate. The debtor argues Section 3.2 of the Modified Plan (2.4 of the initial plan) only controls the “amount and classification,” and by omission does not control the interest rate. The debtor argues further that “the debtor clearly intended to pay her principal of the primary loan in full at an interest rate of 4.75%.”

The debtor’s own arguments are contradictory. The debtor wants the interest rate to be separate from the “amount,” but the debtor clearly agrees that the interest rate is part of what “the debtor clearly intended to pay.” The rate of interest determines in part the “amount” paid.

Additionally, whatever the debtor intended to pay, as argued now by the debtor, is subject to the plain language of the plan. The debtor also intended to pay a monthly dividend of \$517.91 on a total claim of \$27,611.58, but those amounts are subject to being overridden by the Proof of Claim (or disposition of claim objection). It is not clear why those amounts are subject to being overridden but not the interest rate, which also affects the amount of the claim.

Leaving aside the issues of legal contention, USDA has not actually filed an accounting or any evidence supporting its allegation of what was sought to be collected. USDA argues its actions were objectively reasonable, but there is no evidence supporting this claim.

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 **xxxxxxxxxx**

Thru #3

No 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 41 days' notice was provided. Dkt. 63.

The Motion to Confirm is XXXXXXXXXXXX

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 50) filed on September 25, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 64) on December 22, 2020, opposing confirmation on the following grounds:

1. Debtor has admitted that the Westlake Parkway address is not where she lives and that the address listed as her business address is her residence.
2. The trustee objects to the attorney's fees requested in the Chapter 13 Plan as they are contradictory to the fees represented in the Rights & Responsibilities filed in this case. The plan seeks \$6,000 in fees where the Rights & Responsibilities represents fees to be \$4,000.
3. The Internal Revenue Service has filed a priority claim in the amount of \$6,408.35 (Claim 3-1) and the Franchise Tax Board has filed a priority claim in the amount of \$2,281.99. Debtor's plan does not provide for these priority claims.

DEBTOR'S REPLY

The debtor filed a Reply on January 5, 2021, Dkt. 69. The debtor represents that the issues with the debtor's address and Rights and Responsibilities have been corrected. The debtor argues further that the priority tax debt is around \$5,000, which may need to be established through an objection to claim.

The debtor requests a 60-day continuance to allow the issues to be resolved.

DISCUSSION

At the prior hearing, the parties requested a continuance to allow the trustee to review the tax return.

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 Confirm filed by the debtor, Elsie Supnet Liberato, 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~~

3. [20-23721](#)-C-13 ELSIE LIBERATO
[GC-3](#) Gerald Glazer

CONTINUED OBJECTION TO CLAIM OF
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 3
1-25-21 [[74](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(1) procedure which requires 44 days' notice.

The Proof of Service shows that only 43 days' notice was provided. Dkt. 78.

The Objection to the Proof of Claim is XXXXXXXX

The debtor filed this Objection to Proof of Claim, No. 3, filed by the Internal Revenue Service seeking a determination that the 2018 tax debt owed by the debtor is \$0.00, and not the \$3,455.60 estimate stated in the POC.

The POC indicates it is based on an estimate for 2018 taxes because the 2018 return was not yet filed.

Debtor filed her declaration (Dkt. 76) attesting to the 2018 return having been filed, and that it shows she owes no taxes for 2018. However, the return itself has not been filed as an exhibit.

At the prior hearing, the parties requested a continuance to allow the trustee to review the tax return.

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 Claim filed in this case 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 Objection to Proof of Claim Number 3 filed by the Internal Revenue Service is XXXXXXXX

Thru #5

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 29 days' notice was provided. Dckt. 96.

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. Debtors are delinquent \$1,663.00.
2. Additional administrative expenses totaling \$11,500.00 may be due from expenses of the Chapter 7 case prior to conversion. The trustee requests that if the above applications are granted by the Court, the following language be included in the order confirming the debtors' plan:

"From the \$1,100.00 of each monthly plan payment to be paid on account of administrative fees, \$61.60 shall be paid to Chapter 7 Trustee Sheri L. Carello, \$819.79 shall be paid to Desmond, Nolan, Livaich and Cunningham, Counsel for Chapter 7 Trustee Sheri L. Carello, and \$218.61 shall be paid to Debtors' attorney Scott Shumaker."
3. The trustee estimates the minimum plan payment will need to be \$1,990.00, which is greater than the proposed \$1,946.80 average plan payment.
4. Schedule I indicates gross wages of \$475.00 per month for debtor Susan Evette Hutchens. Debtor testified at her 341 Meeting of Creditors that she resigned from her job and has no income at this time.
5. The plan proposes valuing the secured claim of Hyundai Automotive Financial, but no motion to value that claim has been filed.
6. Debtors' Schedule J indicates an intent to pay student loans outside of the plan, which is unfair discrimination against other unsecured claims. While the debtors amended their schedules, the amended versions were not signed and thus the issue remains.

7. Debtors' Amended Schedule A/B at line 25 indicates a 1/3 interest in Hutchens Trust, but with an unknown value. Debtors' Schedule I lists income of \$1,350.00 from the Hutchens Trust. The trustee requests the following documentation be provided to demonstrate that the plan is feasible and meets the liquidation test:

- a. A signed and dated copy of the most recent accounting prepared by the trustee of the Hutchens Family Trust;
- b. The 2019 State and Federal Tax returns, to include all attachments and schedules, filed by the Hutchens Family Trust;
- c. The name, mailing address, telephone number and email address for the trustee administering the Hutchens Family Trust;
- d. A Statement of Distributions to Trust Beneficiaries for the calendar year 2020 prepared, signed and dated by the Hutchens Family Trust trustee;
- e. A current statement of Assets and Valuations of all assets held by the Hutchens Family Trust which is also dated and signed by the trustee.

8. The Trustee requests that the debtors provide copies of all bank statements from their two Chase Bank accounts identified in their Amended Schedules A/B and identify the sources of all deposits in these bank accounts for the 2020 calendar year.

DISCUSSION

During the prior hearing the parties requested a continuance to allow the debtors time to address the trustee's remaining grounds for opposition.

At the hearing, **xxxxxxxxxxxxxx**

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**

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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. Dckt. 109.

The Motion to Withdraw Claim Nos. 15-18 is granted.

The debtors filed this Motion seeking to withdraw Proofs of Claim, Nos. 15, 16, 17, and 18 (the "Claims"). The Claims were all filed by the debtors on behalf of Navient Solutions, LLC, while the debtors' case was under Chapter 7.

After the case was converted to one under Chapter 13 on November 19, 2020 (Dkt. 60), Navient Solutions, LLC, filed Proof of Claim, No. 19, on behalf of the Department of Education Loan Services (the "New Claim"). The debtors argue that the New Claim includes the aggregate of the Claims, and therefore is duplicative.

The debtors filed this Motion because of ambiguity in Federal Rule of Bankruptcy Procedure 3006 governing withdrawal of claims. Specifically, that Rule states a "creditor may withdraw a claim . . ." but does not speak to the debtor or trustee's withdrawal of a claim.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3004 was enacted in part to allow the debtor to insure that non-dischargeable debts (like student loans) are reduced by distributions from the bankruptcy estate, 9 COLLIER ON BANKRUPTCY P 3004.01 (16th 2020). When that Rule was amended in 2005 to remove language providing that a creditor's later filed proof of claim supercedes the one filed by the debtor or trustee, the issue of whether to allow amendments by the creditor was left to the courts. Id.

The court finds that the New Claim is best construed to be an amendment to the Claims.

In this instance where the case was converted and the creditor's claims were already allowed in a similar amount to those sought in the New Claim, and where the debtors support the amendment, the court finds good cause to allow the amendment.

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 filed by the debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. Proofs of Claim, Nos. 15, 16, 17, and 18 filed by the debtors are disallowed in their entirety. Proof of Claim, No. 19, is deemed to be an amended proof of claim.

Final Ruling: No appearance at the March 23, 2021 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. Dckt. 63.

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 Modify 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, Jeffrey William Cook and Christina Lee Cook, 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 filed on February 8, 2021 (Dckt. 59) 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.

Final Ruling: No appearance at the March 23, 2021 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. Dckt. 134.

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 Modify 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, Tiajuanna Louise Toles, 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 February 10, 2021 (Dckt. 133) 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.

8. [20-24757](#)-C-13 MERLY AGUDA CONTINUED OBJECTION TO
[RDG](#)-1 Peter Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-7-20 [[19](#)]

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 36 days' notice was provided. Dckt. 22.

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 plan proposes valuing the secured claim of FCI Lending Servicing, Inc., but no motion has been filed to value that claim.
2. Debtor's plan provides for total priority claims in the amount of \$1,061.00. On November 25, 2020 the Internal Revenue Service filed an amended claim listing Priority Claims in the amount of \$8,618.75.
3. The Franchise Tax Board has filed a proof of claim in the secured amounts of \$4,486.71. The debtor has failed to identify this claim in the plan or on Schedule D.

DISCUSSION

At the prior hearing the parties agreed to a continuance to address the tax claim issues.

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 XXXXXX

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 XXXXXXX

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 the trustee to review the debtor's pay advices.

Thereafter the trustee filed a supplemental opposition noting that Amended Schedule J includes a monthly expense of \$240 for retirement loan repayment, and the plan does not address any increase in plan payment for when the loan is repaid.

The trustee also requests a copy of the debtor's March 2021 pay advice.

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 **xxxxxxx**

10. [21-20581](#)-C-13 JENNIFER CAMPBELL
[MS-1](#) Mark Shmorgon

MOTION TO AVOID LIEN OF
GREENBACK ESTATES UNIT NO. 4
HOMEOWNERS ASSOCIATION
2-20-21 [[6](#)]

Final Ruling: No appearance at the March 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 31 days' notice was provided. Dckt. 10.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Greenback Estates Unit No. 4 Homeowners Association ("Creditor") against property of the debtor commonly known as 6205 Carlow Drive #4, Citrus Heights, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$31,357.85, Exhibit D, Dckt. 9. An abstract of judgment was recorded with Sacramento County on April 6, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$198,486.00 as of the petition date. Dckt. 14. The unavoidable and senior liens that total \$53,948.05 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$198,486.00 on Schedule C. *Id.*

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtor Jennifer Campbell having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Greenback Estates Unit No. 4 Homeowners Association, California Superior Court for Sacramento County Case No. 34-2014-00163391, recorded on April 6, 2020, Document No. 202004060638, with the Sacramento County Recorder, against the real property commonly known as 6205 Carlow Drive #4, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 39 days' notice was provided. Dckt. 57.

The Motion to Modify is denied.

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 53) filed on February 12, 2021.

The trustee filed an Opposition (Dkt. 58) on March 1, 2021, opposing confirmation on the following grounds:

1. The debtor is \$3,050.00 delinquent under the proposed plan.
2. The debtor's plan fails to provide for post-petition arrearages totaling \$7,873.84 to Class 1 Creditor M&T Bank. When accounting for those post-petition arrearages the plan payment must be \$3,087.00, which is higher than the proposed \$3,050.00 payment.
3. The debtor has not filed supplemental schedules.
4. The Confirmed Plan contained a provision requiring the debtor to turnover tax refunds greater than \$2,000, which provision is not in the modified plan.
5. Because the debtor's non-exempt assets total \$31,114.71, the debtor must pay 100% of unsecured claim totaling \$757.86, plus the 1.63% federal judgment rate of interest. The plan does not provide the required interest rate.

DISCUSSION

The debtor has not demonstrated the plan to be feasible. The debtor is delinquent in plan payments; supplemental schedules have not been filed to reflect the debtor's increased income; and the plan payment is less than required to pay cure post-petition arrearages.

Additionally, the plan would need to provide the 1.63% federal judgment rate of interest to unsecured claims in order to meet the liquidation test, and the debtor would likely need to commit tax returns exceeding \$2,000.00 into the plan to constitute the debtor's best efforts.

Each of the above is grounds to deny confirmation. 11 U.S.C. §§

1325(a)(4), (a)(6), (b)(1).

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 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 denied, and the plan is not confirmed.

12. [20-25692](#)-C-13 TINA AGUILERA
[PGM](#)-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
2-22-21 [[19](#)]

Final Ruling: No appearance at the March 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 29 days' notice was provided. Dckt. 23.

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 Santander Consumer USA, Inc. dba Chrysler Capital's ("Creditor") claim secured by the debtor's property commonly known as a 2016 Dodge Dart (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$6,742.00. Declaration, Dckt. 21.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 21, 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 \$6,742.00. Therefore, Creditor's secured claim is determined to be \$6,742.00. 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.

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§ 506(a) is granted, and the claim of Santander Consumer USA, Inc. dba Chrysler Capital ("Creditor") secured by property commonly known as a 2016 Dodge Dart (the "Property") is determined to be a secured claim in the amount of \$6,742.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

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 48 days' notice was provided. Dckt. 78.

The Motion to Confirm is ~~XXXXXXX~~

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 76) filed on February 3, 2021.

The trustee filed an Opposition (Dkt. 86) on February 22, 2021, opposing confirmation on the following grounds:

1. The 341 Meeting of Creditors has not been concluded.
2. Debtor is \$115.00 delinquent in plan payments.
3. Debtor's plan proposes a 100% dividend to general unsecured claims in the total amount of \$2,569.17 (DN 76 Page 5) A review of the claims filed in debtor's case on Pacer indicate total unsecured claims filed in the amount of \$12,746.37. Trustee estimates a plan payment of \$300.00 a month for 60 months is required to fund a 100% plan based on claims filed to date.

The debtor filed a Reply on March 15, 2021, stating only that the debtor agrees the increased plan payment is necessary, which can be addressed in the order confirming the plan.

DISCUSSION

A review of the docket shows the 341 Meeting has now been concluded. However, it is unclear whether new confirmation issues arose after the Meeting.

Additionally, the evidence shows that the debtor is delinquent in plan payments, meaning the plan has not been demonstrated to be feasible.

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 Confirm filed by the debtor, Esther Vasquez, 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**