

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

May 11, 2021 at 1:30 p.m.

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

1.	21-21002 -C-13	KIMBERLY BRADLEY	MOTION FOR RELIEF FROM
	GAL -1	Steele Lanphier	AUTOMATIC STAY
			4-5-21 [11]

FARMERS NATIONAL BANK VS.
DEBTOR DISMISSED: 4/22/2021

Final Ruling: No appearance at the May 11, 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 36 days' notice was provided. Dkt. 16.

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).

<p>The Motion for Relief from the Automatic Stay is denied without prejudice as moot.</p>
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The instant case was dismissed on April 22, 2021. Dkt. 24. Therefore, the automatic stay was terminated by operation of law. 11 U.S.C. §§ 362(c) and 549(c).

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the debtor.

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.

May 11, 2021 at 1:30 p.m.

The Motion for Relief from the Automatic Stay filed by Farmers National Bank 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 without prejudice as moot, this bankruptcy case having been dismissed on April 22, 2021 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the property commonly known as a 2016 Ford Explorer pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the April 22, 2021 dismissal of this bankruptcy case.

Final Ruling: No appearance at the May 11, 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 40 days' notice was provided. Dckt. 75.

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 Plan is denied as moot.

The debtor filed a new plan on April 12, 2021. Dkt. 76.

Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 debtor, Kimberly Michelle Welch, 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 as moot.

Final Ruling: No appearance at the May 11, 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 54 days' notice was provided. Dckt. 34.

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 Second Amended Chapter 13 Plan (Dckt. 32) filed on March 18, 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, Cynthia Lynn Arieta, 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 filed on March 18, 2021 (Dckt. 32) 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.

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 36 days' notice was provided. Dckt. 108.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dckt. 103) filed on April 5, 2021.

The trustee filed an Opposition (Dkt. 109) on April 19, 2021, opposing confirmation because the plan depends on the debtor getting a loan modification to address post-petition arrears of \$37,218.74 (resulting from a forbearance ending May 31, 2021), and no modification has been approved to date.

The debtor filed a Reply on May 5, 2021. Dkt. 112. The debtor reports that a 90 day extension on the forbearance period has been made, and notes that the debtor cannot apply for a loan modification until after the forbearance period runs. In response to the trustee's opposition the debtor argues that the plan provides for the post-petition arrearages by specifying that a loan modification will be entered or a modified plan proposed.

DISCUSSION

The modified plan provides that "Debtor will attempt to get a loan modification prior to the end of her forbearance period (05/31/2021) and will file the permission for said loan modification if approved." Dkt. 103. Contrary to what the plan provides, the debtor reported in her Reply that getting a loan modification before the forbearance period ends is not possible. Dkt. 113.

Since modification is not permitted before the forbearance period ends, the plan on its face is not feasible - the only way to address the post-petition arrearages is by filing a new modified plan.

The plan being infeasible is reason 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 Modify filed by the debtor, Karla Antonette Souza Gama, 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.

Final Ruling: No appearance at the May 11, 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 39 days' notice was provided. Dckt. 62.

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 Refinance is granted.

The debtor filed this Motion seeking authority to refinance the debtor's home mortgage.

The principal amount to be refinanced is \$409,200.00. The debtor intends to use net proceeds in the amount of \$98,044.00 from the refinance to pay 100% of claims and end the plan in the 60th month. The term of the loan is 30 years at 3.75% fixed interest.

The Chapter 13 trustee filed a Response indicating non-opposition so long as the debtor includes specific language in the order granting the motion. Dkt. 63. The debtor filed a Reply indicating accord with adding the language.

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 Refinance filed by the debtor Delia Mayte Larios 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.

Thru #7

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 35 days' notice was provided. Dkt. 104.

The Motion to Modify Plan is XXXXXXXX

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 103) filed on February 2, 2021.

The trustee filed an Opposition (Dkt. 105) on February 17, 2021, opposing confirmation on the following grounds:

1. Section 1.02 of the plan indicates there are no additional provisions, which conflicts with the presence of additional provisions.
2. The plan mathematically requires a \$4,218.25 monthly payment, which is greater than the proposed \$4,000.00 monthly payment beginning February 2021.
3. The debtor has not filed supplemental Schedules I and J.
4. The additional provisions may be impermissibly modifying Carrington Mortgage Service's rights by forcing Carrington Mortgage Service to receive adequate protection payments rather than its contractual payment.
5. The plan proposes a loan modification, but the debtor has not filed a motion for authority to incur debt.

DISCUSSION

The prior hearing was continued to allow the debtor to prosecute a motion seeking authorization to make trial loan modification payments, a first step towards permanent loan modification.

At the hearing, the parties reported the present status of the Motion **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 Modify Plan filed by the debtor, Antoinette Michelle Woods, 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 Modify Plan is
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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 31 days' notice was provided. Dckt. 114.

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 Consent to Enter Into Loan Modification is granted.

The debtor filed this Motion seeking authority to make trial loan modification payments.

The monthly payments under the proposed modified loan would be \$2,929.20, which is less than the current \$2,936.00 monthly payment.

There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall continue the hearing to ~~xxxxxxxxxxxxxx~~ for a hearing on approval of the permanent loan modification.

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 Consent to Enter Into Loan Modification filed by the debtor Antoinette Michelle Woods 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, and the debtor is authorized to make the trial loan modification payments.

IT IS FURTHER ORDERED that the hearing is continued to ~~xxxxxxxxxxxxxx~~ for a hearing on approval of the permanent loan modification.

8. [20-23413](#)-C-13 REBECCA CORONA
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CLAIM OF U.S.
DEPARTMENT OF EDUCATION, CLAIM
NUMBER 8
3-8-21 [[35](#)]

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 64 days' notice was provided. Dckt. 37.

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. 8, filed by the U.S. Department of Education was filed late and should be disallowed.

The deadline for governmental units to file proofs of claim in this case is January 6, 2021. Notice of Bankruptcy Filing and Deadlines, Dckt. 11. The Proof of Claim subject to this Objection was filed February 10, 2021.

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 8 of the U.S. Department of Education is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the May 11, 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 41 days' notice was provided. Dckt. 132.

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 Compensation is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Paula Michelle Hutchinson, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period October 9, 2020, through December 28, 2020. Applicant requests fees in the amount of \$720.00, which amount is for services incurred prosecuting the Second Modified Plan confirmed on December 23, 2020. Dkts. 123, 126, 127.

FEES ALLOWED

The unique facts surrounding the case, including prosecution of a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$720.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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 Compensation filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional Employed by Paula Michelle Hutchinson ("Debtor")

Fees in the amount of \$720.00, as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Final Ruling: No appearance at the May 11, 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. Dkt. 133.

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 hearing on the Motion to Reconsider is continued to
May 25, 2021 at 1:30 p.m.**

The debtor filed this Motion seeking reconsideration of this court's Order (Dkt. 134) denying the debtor's Motion For Contempt.

The United States Department of Agriculture, Rural Housing Service, filed a Response on April 27, 2021, opposing the Motion. Dkt. 135. The debtor filed a Reply on May 4, 2021. Dkt. 137.

Thereafter on May 4, 2021, the debtor filed a request to continue the hearing due to debtor's counsel's scheduling conflict.

Based on the debtor's request and good cause appearing, the hearing on the Motion to Reconsider is continued to May 25, 2021 at 1:30 p.m.

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 Reconsider 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 the hearing on the Motion to Reconsider is continued to May 25, 2021 at 1:30 p.m.

Final Ruling: No appearance at the May 11, 2021 hearing is required.

The Motion is dismissed without prejudice.

On May 7, 2021, the Movant filed an Ex Parte Motion to Dismiss. Dckt. 29. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. The Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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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 Miranda Lee Irene Weston having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

12. [20-22623](#)-C-13 MICHAEL BARKALOW AND
[SDH](#)-4 JOLIE PERCIVAL
Scott Hughes

MOTION TO MODIFY PLAN
3-27-21 [[67](#)]

Final Ruling: No appearance at the May 11, 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 45 days' notice was provided. Dckt. 71.

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 Plan is granted.
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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, Michael Barkalow and Jolie Percival, 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 March 27, 2021 (Dckt. 70) 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)(1) procedure which requires 35 days' notice. The Proof of Service shows that 49 days' notice was provided. Dckt. 119.

The Motion to Confirm is denied.

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dckt. 116) filed on March 23, 2021.

The trustee filed an Opposition (Dkt. 124) on April 26, 2021, opposing confirmation on the following grounds:

1. Debtors' plan provides for Hyundai Motor Finance as a Class 2(b) claim and proposes to pay the value of the collateral securing that claim. But, no motion has been filed to value that claim.
2. The trustee requests the following distribution be specified for administrative claims:

Months 1 through 3-- \$1,100.00 to former chapter 7 trustee;

Month 4--\$700.00 to former chapter 7 trustee;
\$316.00 to former chapter 7 trustee's attorney, and \$84.00 to debtors' attorney;

Month 5--\$869.00 to former chapter 7 trustee's attorney, and \$231.00 to debtors' attorney
3. Trustee requests language in the order confirming plan that debtors will provide copies of their State and Federal income tax returns and all K1 statements to the Trustee on or before April 30 of each year during the pendency of this case, and modify the plan if appropriate. Additionally, that the debtors will submit their 2020 K1 to the Trustee by May 15, 2021.

DISCUSSION

A review of the record shows no motion seeking to value the secured claim of Hyundai Motor Finance has been filed and set for hearing. Without the claim being valued, the plan has not been shown to be feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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, Brett Wood Hutchens and Susan Evette Hutchens, 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.

14. [21-21225](#)-C-13 PORSCHIA PITTS
[LHL](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-7-21 [[9](#)]

NICHOLAS DIAZ VS.

Final Ruling: No appearance at the May 11, 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 34 days' notice was provided. Dckt. 14.

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 defaults of the non-responding parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied
without prejudice as moot.**

The instant case was dismissed on May 4, 2021. Dkt. 43. Therefore, the automatic stay was terminated by operation of law. 11 U.S.C. §§ 362(c) and 549(c).

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the debtor.

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 Nicholas Diaz 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 without prejudice as moot, this bankruptcy case having been dismissed on May 4, 2021 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the property commonly known as 10212 Coloma Road, Rancho Cordova, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the April 22, 2021 dismissal of this bankruptcy case.

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 54 days' notice was provided. Dckt. 42.

The Motion to Confirm is XXXXXXXXXX

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dckt. 41) filed on March 18, 2021.

The trustee filed an Opposition (Dkt. 45) on April 20, 2021, opposing confirmation because the debtor filed Amended Schedule I adding \$1,225.00 in rental/business/profession/farm income without explaining in the debtor's declaration the source of that income.

DISCUSSION

The trustee argues that because the source of the debtor's previously unreported \$1,225.00 in monthly rental/business/profession/farm income has not been disclosed, the plan is likely not feasible.

At the hearing, the debtor's counsel reported the source of the new income 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 Confirm filed by the debtor, Karen Elizabeth Deboda, 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

16. [21-21244](#)-C-13 CYNTHIA ANSPACH
[KH-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-19-21 [[13](#)]

THE VUE ON SEAMIST, LLC VS.

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 22 days' notice was provided. Dckt. 18.

The Motion for Relief from the Automatic Stay is xxxxxx

The Vue On Seamist, LLC ("Movant") filed this Motion seeking relief from the automatic stay with respect to the real property commonly known as 2540 Seamist Drive, Apt. A5, Sacramento, 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, and because the debtor has not made lease payments since December 2020. Declaration, Dckt. 17.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on April 23, 2021. Dkt. 26. The debtor requests a three-week continuance so the debtor can prepare and file all necessary documents, including a Chapter 13 plan and Schedules.

The debtor filed an Amended Opposition May 7, 2021, reiterating the requested continuance and noting several hardships like the loss of her job, vehicle, and bank account. Dkt. 31.

DISCUSSION

A review of the docket shows that the debtor filed her Schedules and Chapter 13 plan, but they are far from complete. The only debt listed in the debtor's Schedules and plan are Movant's claim. Income is listed from an unspecific source, but no expenses are listed. A monthly payment is specified in the plan, but there are no proposed dividends towards any claims.

At the hearing, xxxxxxxxxxxxxxxx

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 The Vue On Seamist, 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 that **xxxxxxxxxx**

17. [21-20747](#)-C-13 JUDY HO
[GB-1](#) Thomas Amberg

OBJECTION TO CONFIRMATION OF
PLAN BY BCMB1 TRUST
4-12-21 [[16](#)]

Final Ruling: No appearance at the May 11, 2021 hearing is required.

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. 18.

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.

Creditor BCMB1 Trust filed this Objection To Confirmation on April 12, 2021. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 22, 26.

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 BCMB1 Trust, 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.

18. [21-20747](#)-C-13 JUDY HO
[MEL](#)-1 Thomas Amberg

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
4-21-21 [[19](#)]

Final Ruling: No appearance at the May 11, 2021, hearing is required.

U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2020-RP1 having filed a Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice. The Proof of Service shows that 15 days' notice was provided. Dckt. 19.

The Motion to Extend the Automatic Stay is granted.

Sushil Kumar and Angila Devi Kumar ("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 Debtors' second bankruptcy petition pending in the past year. Debtors' prior bankruptcy case was dismissed on February 10, 2021, after Debtors failed to confirm a plan and fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 20-23438, Dckt. 72. 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.

Here, Debtors state that the instant case was filed in good faith and explains that the previous case was dismissed because one of the debtors was in and out of the hospital for gallbladder surgery and COVID-19 complications.

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 Debtors**, 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.

Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The 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 Sushil Kumar and Angila Devi Kumar 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, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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 28 days' notice was provided. Dkt. 126.

The Motion to Sell is granted.

The debtor Shirley Cooper filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 7753 Mariposa Avenue, Citrus Heights, California ("Property").

The proposed purchasers of the Property are Veniamin and Valentin Krechunyak, and the proposed sale price is \$250,000.00.

CREDITOR WILMINGTON'S RESPONSE

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A ("Creditor") filed a Response on April 22, 2021. Dkt. 127. Creditor requests the following language be added to any order granting the Motion:

1. Wilmington's claim shall be paid off in full in accordance with the Plan;
2. Wilmington shall timely file an Amended Proof of Claim, if needed, to include all escrow advances made on the Loan, so that the Wilmington Proof of Claim is paid in full through the Plan upon the sale of the Property.

DEBTOR'S REPLY

The debtor filed a Reply on May 3, 2021, agreeing to the additional language, but noting that an amended claim could hold up the closing. Dkt. 129.

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.

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 Shirley Cooper, ("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 Veniamin and Valentin Krechunyak or nominee, the Property commonly known as 7753 Mariposa Avenue, Citrus Heights, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$250,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 125, 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 the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor 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.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice. The Proof of Service shows that 20 days' notice was provided. Dckt. 13.

The Motion to Extend the Automatic Stay is ~~xxxxxx~~.

Thomas Miles Bradley ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year. Debtor's prior two bankruptcy cases were dismissed on October 9, 2020, and November 9, 2020, in both cases for failure to timely file all documents. Order, Bankr. E.D. Cal. No. 20-24429, Dckt. 11; Order, Bankr. E.D. Cal. No. 20-24880, Dckt. 18.

The debtor argues in the Motion that the prior cases failed due to the debtor's age and health issues, and that the debtor's health has since improved.

US BANK'S OPPOSITION

On May 6, 2021, U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL1 ("US Bank") filed an Opposition. Dkt. 21.

US Bank argues that the case was filed in bad faith because (1) all of the debtor's cases were filed to prevent foreclosure sales; and (2) the debtor has not filed Schedules in or otherwise prosecuted any of the three cases. US Bank also notes that without having filed Schedules, it is unclear if the debtor has an ability to fund a Chapter 13 case.

DISCUSSION

The debtor's position is that health issues were the primary hindrance in prosecuting the prior cases. But, no further detail is provided as to why those issues are not likely to return.

More likely, the common denominator behind the debtor's inability to prosecute a bankruptcy is being without the assistance of knowledgeable bankruptcy counsel. At this juncture it appears debtor has not yet retained counsel to change that pattern.

A review of the docket shows the debtor was supposed to file missing filing documents by April 28, 2021. Dkt. 18. Those missing documents have not been filed, so the case may soon be dismissed.

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 Extend the Automatic Stay filed by Thomas Miles Bradley 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**

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. Dckt. 20.

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. Debtor has failed to provide the trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.
2. Creditor OneMain filed a proof of claim with a secured amount of \$15,005.14. A monthly dividend of at least \$283.17, which is greater than the proposed \$236.17 dividend.
3. Debtor testified at his 341 Meeting of Creditors that he expects to owe taxes for the year 2020. Trustee requests Debtor provide his 2020 Federal and State tax returns.
4. Section 7.02 of Debtor's plan provides that the debtor has elected to pay his educational loans outside of the Chapter 13 plan as reflected in his Schedule J. Debtor's Schedule J fails to account for this monthly expense.
5. Debtor's Schedule I at Line 5c shows a payroll deduction of \$400.00 per month for voluntary contribution to a retirement plan. The March 10, 2021 pay advice provided to the trustee indicates Debtor is contributing approximately \$734.00, or 8% to his 401k. This expense is not reasonable or necessary in any amount.

DISCUSSION

The debtor has not shown the plan to be feasible because the amount of 2020 taxes owing are unknown; because the debtor omitted student loan payments from Schedule J; and because creditor OneMain's claim is greater than anticipated and the proposed dividend will not pay the claim in 60 months.

The debtor has also not yet provided the trustee with a copy of the

debtor's tax return.

The debtor is also making a voluntary retirement contribution of \$400 a month.

Each of the above is reason to deny confirmation. 11 U.S.C. §§ 521(e)(2)(A)(I), 1325(a)(6) & (b)(1).

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.

23. [21-20476](#)-C-13 CYNTHIA MARTIN
[RDG](#)-1 Julius Cherry

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-5-21 [[12](#)]

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. 15.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan because the California Department of Tax and Fee Administration filed a proof of claim establishing a \$85,561.66 secured claim, which is greater than the \$42,000.00 claim anticipated in the plan.

Without the debtor objecting to that proof of claim, the higher amount will control and the plan will not be feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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.

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 40 days' notice was provided. Dckt. 51.

The Motion to Modify Plan is ~~XXXXXXXXXX~~

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 48) filed on April 1, 2021.

The trustee filed an Opposition (Dkt. 56) on April 19, 2021, opposing confirmation on the following grounds:

1. Section 7.02 of the debtors' plan provides that a balance of \$130.14 is owed to Class 1 creditor US Bank Home Mortgage for the prepetition arrearages. Section 7.02 also provides that the balance of \$130.14 shall be paid to this creditor in March 2021. The trustee is unable to retroactively administer this provision of the debtors' plan. Trustee records indicate that in March 2021 this creditor received a disbursement of \$1.13 for the prepetition arrears.
2. Section 7.03 of Debtors' currently confirmed plan provides for Sacramento County Utilities as Class 2 secured claim. The debtors' proposed plan no longer provides for this claim. Trustee records indicate this claim has been paid in full. In the event that the motion to modify is granted, the trustee requests Debtors once again provide for this claim in the order and indicate that it has been paid in full.

The debtor filed a Response on April 21, 2021. Dkt. 59. The debtors recommend addressing the trustee grounds for opposition be addressed in the order confirming the plan.

DISCUSSION

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 Modify filed by the debtors, Darrel Keith Johnson and Ebony Nichole 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 ~~xxxxxxxxxx~~

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 50 days' notice was provided. Dkt. 43.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dckt. 42) filed on March 22, 2021.

The trustee filed an Opposition (Dkt. 45) on April 12, 2021, opposing confirmation on the following grounds:

1. The debtor's plan relies on a Motion To Value Collateral.
2. The plan mathematically requires a payment of \$3,451.39 per month, which is greater than the \$2,250.00 payment in months 1 through 4, and \$2,679.52 payment in months 5 through 12.
3. Debtor has proposed a plan payment of \$4,675.49 commencing 12/2021. Debtor's Amended Schedules J evidences net disposable income of \$2,681.29.

DISCUSSION

All trustee's grounds for opposition relate to plan feasibility. While the court has granted the debtor's Motion To Value (Dkt. 50), the plan remains underfunded because the proposed payment is less than the total proposed dividends plus trustee compensation, and because the debtor has not shown income sufficient to make increased payments. That is reason 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 and 1325(a). 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 debtor, Katrina Teresa Nopel, 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.

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. Dkt. 25.

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 the plan does not meet the liquidation test (other grounds for opposition have been addressed, as noted in the trustee's Supplemental Reply(Dkt. 30)).

The trustee argues non-exempt assets total \$1,989.87, meaning the debtor's plan must pay 2.34 percent (\$1,989.87 divided by \$84,863.24) to general unsecured creditors. Debtor's plan pays 0 percent.

The debtor filed a Supplemental Response proposing to increase the plan payment by \$34.00 a month to address the liquidation test. Dkt. 33.

DISCUSSION

At the hearing, the trustee reported whether the proposed increase in payment is sufficient to address all remaining confirmation issues
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 xxxxxxxxxxxxxxxx

Final Ruling: No appearance at the May 11, 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 55 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 Modify 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 debtors, Stephen Joseph Serrano and Chelsie M Serrano, 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 March 17, 2021 (Dckt. 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.

Final Ruling: No appearance at the May 11, 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 50 days' notice was provided. Dckt. 61.

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 (Dckt. 59) filed on March 22, 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, Andrew Michael Nunes, 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 filed on March 22, 2021 (Dckt. 59) 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.

29. [20-23886](#)-C-13 JON COLAMARTINO
[KMM](#)-1 Julius Cherry

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-1-21 [[18](#)]

NISSAN-INFINITI LT VS.

Final Ruling: No appearance at the May 11, 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 40 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 for Relief from the Automatic Stay is granted.

Nissan-Infiniti LT as serviced by Infiniti Financial Services ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2018 Infiniti Q50 (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) because the debtor's lease agreement matured March 20, 2021, the debtor is delinquent in payments, and the debtor has no interest in the Property. Dkt. 20.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) because the debtor's lease agreement matured March 20, 2021, the debtor is delinquent in payments, and the debtor has no interest in the Property.

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

No other or additional relief is granted by the court.

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 Nissan-Infiniti LT as serviced by Infiniti Financial Services("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Infiniti Q50 ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

No other or additional relief is granted.

30. [21-20787](#)-C-13 MARY ANN LEWIS-JOHNSON OBJECTION TO CONFIRMATION OF
[RDG-1](#) AND AMOS JOHNSON PLAN BY RUSSELL D. GREER
Gary Fraley 4-20-21 [[17](#)]

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 21 days' notice was provided. Dckt. 20.

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. Debtors have testified that they have not yet filed their 2020 Federal and State income tax returns, and no exemption has been claimed for future tax refunds on Debtors' Schedule C.
2. The proposed dividend to pay Cradle Company's Class 2 claim will take 76 months.
3. Debtors' Plan provides for Westlake Financial for the 2008 Toyota Prius as a Class 4 claim. Because that claim matures May 2022, it must be treated as a Class 2 claim.

DISCUSSION

The debtors admitted at the Meeting of Creditors that the federal and state income tax returns for the 2020 tax year have not been filed still. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax returns is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, the plan has not been shown to be feasible because the dividend proposed to pay Cradle Company's Class 2 claim will take 76 months. That is further reason to deny confirmation. 11 U.S.C. § 1326(a)(6).

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.

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 35 days' notice was provided. Dckt. 135.

The Motion to Modify Plan is XXXXXXX
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The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dckt. 134) filed on April 6, 2021.

The trustee filed an Opposition (Dkt. 136) on April 19, 2021, opposing confirmation on the following grounds:

1. The plan provides for the Class 2 claim of Santander Consumer, but no proof of claim has been filed for the creditor as required by Section 3.01 of the plan.
2. Section 7.02 of Debtors' plan provides for an increase to the Class 1 arrearage claim. Without the creditor amending its proof of claim to incorporate the arrearages, the debtors need to provide for the post-petition mortgage arrears as a separate amount to be paid with a specified dividend.
3. Pursuant to the terms of the plan, the total amount to be paid to the trustee through March 2021 should be \$13,350.00. However, the debtors have paid a total of \$21,049.00 through March 2021.

DISCUSSION

The plan requires secured claims to have filed a proof of claim as a prerequisite to getting paid under the plan. As the trustee notes, no proof of claim has been filed by Santander Consumer. But, it is not clear whether this issue will have an effect on confirmation since Santander has not received any payments to date.

The other issues are that the debtor has overpaid, and that additional postpetition arrearages need to be provided for separately in the plan, both issues which can likely be addressed in the order confirming the plan.

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 Modify filed by the debtors, Laura Elizabeth England and Donald Lee England, 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 ~~xxxxxxxxxxxxxx~~

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 39 days' notice was provided. Dkt. 57.

The Motion to Modify is XXXXXXX

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 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 hearing was continued to allow the debtor to file supplemental schedules, the other grounds for opposition having been agreed by the parties to be addressed in the order confirming plan.

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 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 **xxxxxxxxxx**

Final Ruling: No appearance at the May 11, 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. 49.

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 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, Ryan Max Freeman and Sarah Baumgartner Freeman, 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 March 31, 2021 (Dckt. 45) 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.