

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 27, 2021 at 1:30 p.m.

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

1.	<u>19-20015</u> -C-13	LUIS/VANESSA GARCIA	MOTION TO MODIFY PLAN
	<u>WW-5</u>	Mark Wolff	6-18-21 [<u>102</u>]

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 39 days' notice was provided. Dkt. 118.

The Motion to Modify Plan is XXXXXXXXXX

The debtors filed this Motion seeking to confirm the Third Modified Chapter 13 Plan (Dkt. 106) filed on June 18, 2021.

The trustee filed an Opposition (Dkt. 119) on July 12, 2021, opposing confirmation on the following grounds:

1. The plan relies on the court granting the debtors' motion seeking approval of a loan modification.
2. The plan provides for payments of \$285 for 40 months. The trustee's calculations indicate that the debtors' plan payment will need to be at least \$306.00 in order to be mathematically feasible.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

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

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

July 27, 2021 at 1:30 p.m.
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The Motion to Modify Plan filed by the debtors, Luis Enrique Garcia and Vanessa Michelle Garcia, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 112.

The Motion to Incur Debt is granted.

Te debtors filed this Motion seeking authority to incur debt in the form of a loan modification of the mortgage secured by the debtors' residence.

The proposed financing is in the principal amount of \$194,996.44, paid at 3.125% interest over a 30 year term. Monthly payments are proposed to be \$1,447.98.

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

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

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

The Motion to Incur Debt filed by Luis Enrique Garcia and Vanessa Michelle Garcia having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the debtors Luis Enrique Garcia and Vanessa Michelle Garcia are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dkt. 110.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 116.

The Motion to Incur Debt is granted.

The debtors filed this Motion seeking authority to incur debt in the form of an SBA Economic Injury Disaster Loan for their fuel tank polishing business. With the funds the debtors intend to buy new equipment and pay off the loan secured by their work truck.

The proposed financing is in the principal amount of \$60,000.00, paid at 3.75% interest over a 30 year term. Monthly payments are proposed to be \$285.00.

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

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

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

The Motion to Incur Debt filed by Luis Enrique Garcia and Vanessa Michelle Garcia having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtors' 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.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 26 days' notice was provided. Dkt. 55.

The Objection to Confirmation of Plan is sustained.

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

1. The debtor's Plan provides for a .74% distribution to the debtor's general unsecured creditors. However, the projected disposable income available to be applied to make payments to unsecured creditors is \$404.76 for 60 months or \$24,285.60 which would result in an 11% dividend.

2. The debtor's monthly net income listed on the Amended Schedule J filed by debtor on June 30, 2021 totals \$505.00. The debtor's proposed monthly plan payments are \$85.00.

DISCUSSION

The debtor's Schedule J shows that the debtor has \$404.76 in monthly disposable income, but is only paying \$85.00 monthly. The debtor also proposes paying only a 0.74% distribution to general unsecured creditors, but has the ability based on disposable income to pay 11%.

Both of the aforementioned are reason to deny confirmation. 11 U.S.C. § 1325(b)(1)(B). 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.

5. [20-20342](#)-C-13 HONEY SPANJIAN
[MRL](#)-4 Mikalah Liviakis

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE LIVIAKIS LAW
FIRM FOR MIKALAH RAYMOND
LIVIAKIS, DEBTORS ATTORNEY(S)
6-20-21 [[53](#)]

Final Ruling: No appearance at the July 27, 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. 57.

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 Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Honey Orwinabeth Spanjian, 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 May 14, 2021, through June 20, 2021. Applicant requests fees in the amount of \$3,349.50.

The services performed for the debtor include drafting a motion to sell property, motion to employ realtor, and communication with the parties to complete the transaction.

FEES ALLOWED

The unique facts surrounding the case, including work related to the sale of the debtor's real property, 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 \$3,349.50 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 Allowance of Fees and Expenses filed

by Mikalah Raymond Liviakis ("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 Honey Orwinabeth Spanjian:

Fees in the amount of \$3,349.50,

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.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 25.

The Motion to Incur Debt is granted.

The debtor filed this Motion seeking authority to incur debt to purchase a 2018 Honda Accord.

The loan is in the principal amount of \$14,350.00 (after accounting for a \$20,000.00 down payment from the debtor's parents), paid at 8.95% interest over 36 months.

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

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

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

The Motion to Incur Debt filed by Helen Elizabeth Wayne 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.

7. [19-27468](#)-C-13 EDDIE/CARYN GARDNER
[AP-1](#) Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-18-21 [[122](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION VS.

Thru #8

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 35 days' notice was provided. Dkt. 128.

The Motion for Relief from the Automatic Stay is xxxxxx.

HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 9475 Mandrake Court, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition payments. Declaration, Dkt. 125. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$493,726.72, exceeds the value of the Property, which is \$471,844.00. Id.

TRUSTEE'S RESPONSE

The trustee filed a Response on June 7, 2021. Dkt. 131. The Response reports that the debtors are \$11,941.00 delinquent in plan payments, and that \$43,128.37 has been distributed to Movant as a Class 1 claim holder under the confirmed plan.

DEBTOR'S OPPOSITION

The debtors filed an Opposition on June 7, 2021. Dkt. 133. The debtors argue that the value of their home is now \$689,000.00, leaving a significant equity cushion. The debtors also report that they incurred additional expenses due to COVID-19, and that a modified plan is being proposed to bring payments current.

The debtors request the Motion be denied, or continued to the confirmation hearing for the Modified Plan.

DISCUSSION

The parties agreed to a continuance at the prior hearing to allow the debtors to prosecute a modified 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 for Relief from the Automatic Stay filed by HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("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 xxxxxxxxxxxxxxxx

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 36 days' notice was provided. Dkt. 141.

The Motion to Modify is XXXXX

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 140) filed on June 7, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 144) on June 14, 2021, opposing confirmation because the modified plan does not provide all disposable income into the plan. The current plan provided for a plan payment increase after a retirement loan is paid off; the modified plan does not propose an increase upon repayment in full of the retirement loan.

DEBTORS' REPLY

The debtors filed a Reply on July 6, 2021. Dkt. 149. The debtors' counsel argues the debtors are proceeding in good faith, that the amended schedules no longer include a retirement loan, and that "the retirement loans were finished being paid as the costs associated with the pandemic increased their expenses so that their was no disposable income to contribute to the Trustee."

DISCUSSION

At the prior hearing the parties agreed to a continuance to allow the debtors to file accurate amended schedules, and for the trustee to review whether the debtors' proposed step-up payments are sufficient.

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 debtors, Eddie Gardner and Caryn Gardner, 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

9. [21-21674](#)-C-13 VINESH/SNITA SAMI
[PPR](#)-1 Mikalah Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY SIERRA
PACIFIC MORTGAGE CO.
5-17-21 [[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 22 days' notice was provided. Dkt. 14.

The Objection to Confirmation of Plan is sustained.

Creditor Sierra Pacific Mortgage Company, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan provides for Creditor's claim as a Class 4 where there are \$4,071.77 in arrears to be paid.
2. The plan misstates the postpetition payment to be \$1,918.00, but the actual postpetition payment is \$1,978.62.

DISCUSSION

While no Proof of Claim has been filed to date, Creditor has filed a Declaration providing testimony as to what the prepetition arrearage and postpetition arrearage amounts are. Dkt. 18.

A review of the debtors' Schedules show an inability to make the increased payments to account for the higher-than-anticipated arrears and postpetition payments.

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 Sierra Pacific Mortgage Company, Inc., 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.

10. [21-21875](#)-C-13 KIMBERLY BRADLEY
[GAL](#)-1 Steele Lanphier

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION TO HAVE IN REM RELIEF
FROM STAY
5-27-21 [[9](#)]

FARMERS NATIONAL BANK VS.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 14.

The Motion for Relief from the Automatic Stay is granted.

Farmers National Bank ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2016 Ford Explorer (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 20 postpetition payments. Declaration, Dkt. 11. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$35,090.27, exceeds the value of the Property, which is \$24,000.00. Id.

On Schedule A/B, the debtor values the vehicle at \$25,000.00. Dkt. 26. On Schedule D, the debtor lists Movant's debt at \$29,000.00. Id.

Movant also seeks 11 U.S.C. § 362(d)(4) In Rem relief on the grounds that the debtor filed this case as part of a scheme to delay, hinder, or defraud creditors that involved multiple filings (19-22798, dismissed 8/28/2019 for failure to pay the filing fees; 19-26165, dismissed 3/17/2021 for plan payment delinquency; and 21-21002, dismissed 4/22/2021 for failure to timely file documents).

TRUSTEE'S RESPONSE

The trustee filed a Response on June 24, 2021, noting the Meeting of Creditors is scheduled for July 8, 2021; that a confirmation hearing is set for August 10, 2021; that Movant's claim is treated as a Class 2 in the proposed plan; and that the debtor has paid \$1,200.00 to date in plan payments.

JULY 13 HEARING

At the prior hearing, the court granted a continuance to allow debtor's counsel to appear.

DISCUSSION

Upon review of the record, the court finds cause for relief from

stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent postpetition payments. The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$35,090.27, exceeds the value of the Property, which is at most \$25,000.00.

The court also finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property, and therefore relief is also granted pursuant to 11 U.S.C. § 362(d)(4).

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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests the court waive this stay without explaining what cause there is for waiver. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

This part of the requested relief is not granted.

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 Farmers National Bank ("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 2016 Ford Explorer ("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.

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), the court having found that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. If recorded in compliance with applicable State laws governing

notices of interests or liens in real property, this order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this Order.

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

No other or additional relief is granted.

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 36 days' notice was provided. Dkt. 61.

The Motion to Confirm is XXXXXXXXX

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 59) filed on June 21, 2021.

The trustee filed an Opposition (Dkt. 64) on July 8, 2021, opposing confirmation on the basis that the plan does not explain how the debtor's mortgage forbearance will affect the plan, or when the forbearance arrearages will be paid.

DISCUSSION

At the hearing, XXXXXXXXXXXXXXXX

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

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

The 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 XXXXXXXXX