

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**August 25, 2020 at 1:30 p.m.**

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

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1. [20-23001](#)-C-13 BOB TRAN OBJECTION TO CONFIRMATION OF  
[RDG-1](#) Mikalah Liviakis PLAN BY RUSSELL D. GREER  
7-30-20 [[15](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 26 days' notice was provided. Dckt. 18.

**The Objection to Confirmation of Plan is overruled.**

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

1. Debtor admitted at the Meeting of Creditors he is no longer working with Uber or Lyft, and therefore does not have the \$1,150 in income reported on Schedule I.
2. Debtor lists the claim of Wells Fargo Home Mortgage as a Class 4 without listing a monthly mortgage payment as an expense.
3. The debtor's plan fails the liquidation test because the debtor's non-exempt equity totals \$51,018.00 and the plan only proposes a 13% (\$20,478.01) dividend to unsecured creditors.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 18, 2020. Dckt. 19. Debtor's argues he received news that he can resume work for Uber, and that he anticipates \$1,550 a month. Declaration, Dckt. 20.

The Opposition also notes that Amended Schedules I and J have been filed to add the mortgage expense and rental income.

As to the liquidation analysis, counsel for the debtor argues that

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the plan meets the liquidation test because a \$28,986.50 cost of sale should be accounted for.

## **DISCUSSION**

The liquidation test requires "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1325(a)(4). In determining the value of property received in a hypothetical Chapter 7, the court should account for administrative expenses like cost of sale.<sup>8</sup> COLLIER ON BANKRUPTCY P 1325.05 [5] (16th 2020).

The court finds that the \$28,986.50 cost of sale advanced by the debtor, which comes out to a little less than 8 percent, is reasonable. Therefore, the plan meets the liquidation test.

The court also notes debtor has amended schedules for accuracy, and represents that he has resumed work. Because the debtor has been able to make the payments thus far, the court finds that the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the plan is confirmed.

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

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

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

**IT IS ORDERED** that the Objection is overruled, and the debtor's Chapter 13 Plan filed on June 12, 2020 (Dckt. 2), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 76.

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 First Amended Chapter 13 Plan (Dckt. 73) filed on July 15, 2020.

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, 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, the debtor's First Amended Chapter 13 Plan filed on July 15, 2020 (Dckt. 73) 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.

3. [15-25717](#)-C-13 LORIN/IRENE PARTAIN MOTION TO SELL  
[JCK](#)-3 Kathleen Crist 7-29-20 [[70](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) procedure which requires 21 days' notice. The Proof of Service shows that 43 days' notice was provided. Dckt. 73.

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

**The Motion to Sell is granted.**

The debtors Lorin Chane Partain and Irene Bangayan Partain filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 8782 Yellow Rose Court, Sacramento, California ("Property").

The proposed purchaser of the Property is Coren Smith, who has made an offer of \$383,000.00.

**DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion is granted.

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

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

The Motion to Sell Property filed by the debtors, Lorin Chane Partain and Irene Bangayan Partain ("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 Coren Smith or nominee, the Property commonly known as 8782 Yellow Rose Court, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$383,000.00, on the terms and conditions set forth in the Purchase Agreement (Dckt. 72), and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, 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 Movant. Within fourteen days of the close of escrow, the Movant shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

4. [18-24417](#)-C-13 JUAN ANTONIO BENITES AND MOTION FOR RELIEF FROM  
[APN-1](#) ALMA LOZANO AUTOMATIC STAY  
Scott Hughes 6-23-20 [[52](#)]

TOYOTA MOTOR CREDIT  
CORPORATION VS.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 63 days' notice was provided. Dckt. 57.

No responsive pleading has been filed. Therefore, the court enters the defaults of the respondent and other 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.**

Toyota Motor Credit Corporation, as servicer for Toyota Lease Trust, filed this Motion seeking relief from the automatic stay with respect to the debtor's 2017 Toyota Camry.

The Movant argues cause for relief exists because debtors have defaulted on payments, and because debtors were only leasing the vehicle and do not have a property interest. Dckt. 55.

Based on the evidence submitted, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) due to failure to maintain postpetition payments and because debtors do not have more than a possessory interest in the property.

Therefore, the Motion is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Toyota Motor Credit Corporation, as servicer for Toyota Lease Trust ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents,

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representatives, and successors, and all other creditors having lien rights against debtor's 2017 Toyota Camry, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Toyota Camry, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

5. [20-20817](#)-C-13 RONALD COLLA CONTINUED MOTION FOR RELIEF  
[JHK](#)-1 Peter Macaluso FROM AUTOMATIC STAY AND/OR  
MOTION FOR RELIEF FROM  
CO-DEBTOR STAY  
7-2-20 [[31](#)]

SANTANDER CONSUMER USA INC.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 38.

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

Santander Consumer USA, Inc., filed this Motion seeking relief from the automatic stay as to debtor's 2018 Ford F-350.

Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(1) because debtor has missed 4 prepetition and 1 postpetition payments, which allegation is support by declaration. Dckt. 34.

Movant also seeks relief from the co-debtor stay of 11 U.S.C. § 1301, and seeks waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001.

**Debtor's Reply**

The debtor filed a Reply on July 27, 2020. Dckt. 54. The Reply represents that a plan has been filed and set for confirmation hearing that provides for Movant's claim as a Class 1.

**Movant's Response**

Movant filed a declaration in response to the debtor's Reply requesting that the hearing be continued to be heard alongside the Motion To Confirm set for August 25, 2020. Dckt. 58.

**Prior Hearing**

After the prior hearing the parties agreed to a continuance to allow debtor to get a plan confirmed that treats creditor's claim as a class 1, curing the payments delinquencies. Dckt. 60.

**Movant's Supplemental Response**

Movant filed a declaration as a supplemental response on August 18, 2020. Movant reports that it does not oppose confirmation of the Amended Chapter 13 Plan.

Movant requests that if the debtor's Motion to Confirm (Dckt. 45) is granted, that the order granting the motion require debtor to be current in payments, and provide for an *ex parte* relief mechanism in the event debtor defaults and fails to cure after 14 days.

**Discussion**

Movant concedes that it has no basis to oppose debtor's proposed Chapter 13 plan. With the plan confirmed, the court finds that Movant's claim is adequately protected, and there is not cause for relief pursuant to 11 U.S.C. § 362(d) (1).

Therefore, the Motion is denied without prejudice.

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 Santander Consumer USA, 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 Motion is denied without prejudice.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 50.

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 First Amended Chapter 13 Plan (Dckt. 48) filed on July 17, 2020.

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, Ronald Lee Colla, 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 July 17, 2020 (Dckt. 48) 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.

7. [20-22719](#)-C-13 LUCY PATTEN  
[CJK](#)-1 Allan Frumkin

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON TRUST COMPANY, N.A.  
6-30-20 [[18](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 56 days' notice was provided. Dckt. 20.

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.**

Celink, as servicer for The Bank of New York Mellon Trust Company, N.A., trustee of Mortgage Assets Management Series I Trust filed this Objection To Confirmation on June 30, 2020. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 25, 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 Celink, as servicer for The Bank of New York Mellon Trust Company, N.A., trustee of Mortgage Assets Management Series I 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.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 59.

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 debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dckt. 56) filed on July 8, 2020.

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 debtors, Mark Douglas John Powers and Monica Powers, 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 July 8, 2020 (Dckt. 56) 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.

9. [20-22623](#)-C-13 MICHAEL BARKALOW AND  
[SDH](#)-3 JOLIE PERCIVAL  
Scott Hughes

MOTION TO CONFIRM PLAN  
7-8-20 [[41](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 45.

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 debtors filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 43) filed on July 8, 2020.

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 debtors, Michael Barklow 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 debtor's Amended Chapter 13 Plan filed on July 8, 2020 (Dckt. 43) 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.

10. [20-22830](#)-C-13 DAMION HRIBIK  
[RAS-1](#) Gary Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY PHH MORTGAGE  
CORPORATION  
6-22-20 [[15](#)]

**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 64 days' notice was provided. Dckt. 17.

**The Objection to Confirmation of Plan is ~~XXXXXX~~**

Creditor PHH Mortgage Corporation ("Creditor") opposes confirmation of the Chapter 13 plan because the prepetition arrearage is stated to be \$35,141.56, where the actual arrearage is \$40,349.13.

**DISCUSSION**

While the debtor has not filed opposition, a review of the plan's plain language shows Creditor's ground for opposition is baseless.

Section 3.02 of the Plan (emphasis added(Dckt. 4)) states:

**The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim** unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

It does not matter that the incorrect amount is stated in the plan because the Proof of Claim, No. 2, states the correct amount.

Though not raised by the Creditor in its Objection, the real issue is whether the plan is adequately funded given the increased arrearage that needs to be paid. A plan must be feasible to be confirmed. 11 U.S.C. § 1325(a)(6).

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 PHH Mortgage Corporation, 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 ~~XXXXXXXXXXXX~~

11. [20-22852](#)-C-13 DEREK WOLF  
[DVW](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, NA  
7-9-20 [[22](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 47 days' notice was provided. Dckt. 24.

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 U.S. Bank, N.A., as legal title trustee for Truman 2016 SC6 Title Trust, filed this Objection To Confirmation on July 9, 2020. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 41, 43.

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 U.S. Bank, N.A., as legal title trustee for Truman 2016 SC6 Title 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.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 34.

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

**The Objection to Confirmation of Plan is overruled as moot.**

The Chapter 13 trustee filed this Objection To Confirmation on July 20, 2020. Thereafter, the debtor filed an amended plan and corresponding Motion To Confirm, making this Objection moot. Dckt. 41, 43.

Therefore, the Objection is overruled.

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

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

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

**IT IS ORDERED** that the Objection is overruled as moot.

13. [18-25756](#)-C-13 DAVID SIMS  
[KAZ](#)-3 Peter Macaluso

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
5-20-20 [[193](#)]

BOSCO CREDIT LLC VS.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 61 days' notice was provided. Dckt. 199.

**The Motion for Relief from the Automatic Stay is ~~XXXXXX~~.**

Bosco Credit, LLC filed this Motion seeking relief from the automatic stay as to debtor's real property known as 3615 6th Ave., Sacramento, California.

Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(1) because debtor has missed 3 postpetition payments, which allegation is support by declaration. Dckt. 196.

Movant also argues relief is warranted under 11 U.S.C. § 362(d)(2) because the value of the property listed on Schedule A/B is only \$300,000.00, leaving no equity in the property after accounting for the \$287,425.46 in liens and an 8 percent cost of sale.

**Debtor's Opposition**

The filed an Opposition on June 22, 2020. Dckt. 212. Debtor argues the property is worth \$600,000, leaving over \$250,000 in equity. Debtor also argues adequate protection payments are being made via reclassifying the claim as Class 1.

**Trustee's Response**

The Chapter 13 trustee filed a Response on June 2, 2020. Dckt. 204. The trustee does not express a position, but summarizes the case history thus far.

**Movant's Reply**

Movant filed a Reply on June 24, 2020. Dckt. 216. Movant argues (1) debtor has not met debtor's burden to show equity in the property and that it is necessary for reorganization; (2) debtor is bound by the \$300,000 valuation listed in Schedule A; and (3) Debtor has not made all of the required post-petition payments.

Movant also filed a list of evidentiary objections. Dckt. 218.

**Discussion**

At the prior hearing, the debtor represented an offer was made for the sale of debtor's residence.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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 Bosco Credit, 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 ~~XXXXXXXXXXXX~~

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 210.

**The Motion to Confirm the Amended Plan is ~~xxxxxx~~.**

The debtor filed this Motion To Confirm the first amended plan on June 11, 2020. Dckt. 31. The plan provides for \$49,500.00 through May 2019, and for payments of \$3,500 a month for 6 months. Dckt. 209. To complete the plan, the Nonstandard provisions provide for a lump sum either in October 2020 from a refinance, or in November 2020 from a sale.

**Trustee's Opposition**

The Chapter 13 trustee filed an Opposition on June 29, 2020. Dckt. 222. Trustee opposes confirmation on the following grounds:

1. The debtor has misstated the amounts paid into the plan through May 2019. The correct amount is \$52,500.00
2. The proposed plan payments of \$3,500.00 per month are slated to begin June 25, 2019 for six months. This is incorrect. The correct date should be June 25, 2020
3. The proposed plan calls for a refinance generating sufficient funds to pay the plan in full by October 25, 2020. The plan appears to propose a sale of the property by November 25, 2020 should the refinance fail to materialize. These provisions are unclear and require clarification
4. Post petition arrears are incorrectly stated as to Class 1 creditor Franklin/Bosco at \$8,657.71. The correct amount is \$5,062.64.
5. A lump sum payment of \$160,500.00, or the amount necessary to complete the plan is required to pay general unsecured claims a 100% dividend as proposed. This language should be included in an order confirming the plan.

**Bosco Credit LLC's Objection**

Bosco Credit LLC filed an Objection on July 7, 2020. Dckt. 224. Bosco Credit LLC argues the following:

1. Debtor has default in postpetition payments and

thereby has not complied with 11 U.S.C. § 1326(a)(1).

2. The plan does not propose to pay Bosco Credit LLC's claim in equal monthly payments.
3. Debtor's income stated on Schedule I includes rental income of \$1,750.00, which has previously been shown to be speculative. Therefore the plan is not feasible.
4. The plan relies on refinancing or sale of the debtor's home, which is speculative.
5. The plan was not proposed in good faith because prior plans with the same terms have been denied confirmation.
6. Given COVID-19 and the risk that housing prices will fall, debtor should not be permitted to make a balloon payment.

### **Debtor's Reply**

Debtor's counsel filed a Reply on July 13, 2020. Dckt. 230. Debtor argues that all of the trustee's grounds for opposition are correctable in the order confirming plan. In reply to Bosco Credit LLC, debtor argues the following:

1. The plan complies with 11 U.S.C. § 1326(a)(1) because the court can order the payments commence after 30 days from filing.
2. 11 U.S.C. 1325(a)(5)(B) is met because the plan does pay the creditor the "value, as of the effective date of the plan" by providing an interest rate of pursuant to the contract, and equal monthly payments completing with a lump-sum payment in a reasonable time.
3. The plan complies with 11 U.S.C. § 1326(a)(1) because the creditor has received payments.
4. The debtor is current and has provided documentation that the payment is feasible.
5. The plan calls for a sale on a home that has approximately \$200,000 in equity, is listed and has received his first offer already.
6. The debtor has paid \$52,500.00 since filing, and as a show of good faith has/will be paying \$3,500 until the sale is complete.

**Discussion**

At the prior hearing, the debtor represented an offer was made for the sale of debtor's residence.

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 the Amended Chapter 13 Plan filed by the debtor, Thomas Michael Kim ("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 to Confirm the Amended Plan is ~~xxxxxxxx~~

15. [20-23056](#)-C-13 JOHN GARBE  
[RTD-1](#) Mikalah Liviakis

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-29-20 [[14](#)]

YOLO FEDERAL CREDIT UNION  
VS.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 63 days' notice was provided. Dckt. 57.

No responsive pleading has been filed. Therefore, the court enters the defaults of the respondent and other 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.**

Creditor Yolo Federal Credit Union filed this Motion seeking relief from the automatic stay with respect to the debtor's 2016 Honda Pilot.

The Movant argues cause for relief exists because debtors have defaulted on 2 prepetition and 1 postpetition payments. Dckt. 16. Movant also argues its claim is \$23,204.15, which is greater than the \$14,919.00 value of the vehicle.

A review of debtor's schedules shows the vehicle was repossessed prepetition. Debtor does not list the vehicle on Schedule A/B, and lists Movant's claim as unsecured.

Based on the evidence submitted, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) due to failure to maintain postpetition payments. The court also finds relief is warranted pursuant to 11 U.S.C. § 362(d)(1) because the debtor does not have equity in the vehicle and the vehicle is not necessary for an effective reorganization.

Therefore, the Motion is granted.

#### **Relief From 14-day Stay**

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 the stay given that debtor has already surrendered the vehicle.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required

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under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Yolo Federal Credit Union ("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 debtor's 2016 Honda Pilot, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Honda Pilot, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 42.

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

**The Motion to Confirm 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 Confirm filed by the debtors, John William Gaddis and Veronica Gaddis, 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 June 25, 2020 (Dckt. 35) 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.

17. [17-20763](#)-C-13 FRANK/TINA MOONEY  
[PGM](#)-6 Peter Macaluso

MOTION TO AVOID LIEN OF  
CITIBANK, N.A.  
7-28-20 [[90](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. Dckt. 95.

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 Citibank, N.A. ("Creditor") against property of the debtor commonly known as 6832 Hickory Avenue, Orangevale, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$3,925.86. Exhibit A, Dckt. 93. An abstract of judgment was recorded with Sacramento County on July 1, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$334,901.00 as of the petition date. Dckt. 22. The unavoidable and senior liens that total \$455,596.27, as of the commencement of this case. Proof of Claim, No. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) (1) in the amount of \$1.00 on Amended Schedule C. Dckt. 89.

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 Frank Leo Mooney, Jr and Tina Marie Mooney 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 Citibank, N.A., California Superior Court for Sacramento County Case No. 34-2012-00128239, recorded on July 1, 2013, Book 20130701 and Page 0403, with the Sacramento County Recorder, against the real property commonly known as 6832 Hickory Avenue, Orangevale, 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.

18. [17-20763](#)-C-13 FRANK/TINA MOONEY  
[PGM-7](#) Peter Macaluso

MOTION TO AVOID LIEN OF  
DISCOVER BANK  
7-28-20 [[97](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. Dckt. 102.

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 Discover Bank ("Creditor") against property of the debtor commonly known as 6832 Hickory Avenue, Orangevale, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$9,812.26. Exhibit A, Dckt. 100. An abstract of judgment was recorded with Sacramento County on February 6, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$334,901.00 as of the petition date. Dckt. 22. The unavoidable and senior liens that total \$455,596.27, as of the commencement of this case. Proof of Claim, No. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 89.

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 Frank Leo Mooney, Jr and Tina Marie Mooney 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 Discover Bank, California Superior Court for Sacramento County Case No. 34-2012-00133222, recorded on February 6, 2014, Book 20140206 and Page 0926, with the Sacramento County Recorder, against the real property commonly known as 6832 Hickory Avenue, Orangevale, 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.

19. [17-20763](#)-C-13 FRANK/TINA MOONEY  
[PGM-8](#) Peter Macaluso

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.

7-28-20 [[103](#)]

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. Dckt. 108.

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 Citibank, N.A. ("Creditor") against property of the debtor commonly known as 6832 Hickory Avenue, Orangevale, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$5,252.24. Exhibit A, Dckt. 106. An abstract of judgment was recorded with Sacramento County on February 19, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$334,901.00 as of the petition date. Dckt. 22. The unavoidable and senior liens that total \$455,596.27, as of the commencement of this case. Proof of Claim, No. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 89.

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 Frank Leo Mooney, Jr and Tina Marie Mooney having been presented to the court, and upon review of the pleadings, evidence, arguments of

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counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Sacramento County Case No. 34-2013-00146980, recorded on February 19, 2014, Book 20140219 and Page 0607, with the Sacramento County Recorder, against the real property commonly known as 6832 Hickory Avenue, Orangevale, 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.

**Final Ruling:** No appearance at the August 25, 2020 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 42 days' notice was provided. Dckt. 112.

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 modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

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

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

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

The Motion to Confirm filed by the 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 granted, the debtor's Modified Chapter 13 Plan filed on July 14, 2020 (Dckt. 111) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dckt. 210.

**The Motion to Confirm the Amended Plan is ~~xxxxxx~~.**

The debtor filed this Motion To Confirm the first amended plan on July 20, 2020. Dckt. 79.

While the plan has largely been unopposed, an opposition was filed by creditor Heritage Community Credit Union on August 11, 2020. Dckt. 86. That creditor reports that the 2015 Nissan Quest securing its claim has been in a collision and was deemed a "total loss." The creditor, which is provided for as a Class 2(B) in the plan, requests that the plan allow it to apply the insurance proceeds towards its claim.

**Discussion**

No declaration or other evidence was filed with the court to show that debtor's vehicle was in fact in a collision and deemed a "total loss."

At the hearing, the parties reported ~~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 the Amended Chapter 13 Plan filed by the debtor, Vikash Singh and Sanjani Singh ("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 to Confirm the Amended Plan is ~~xxxxxxx~~

22. [17-20493](#)-C-13 CRAIG/KRISTINE DIEZ  
[SNM](#)-3 Stephen Murphy

MOTION TO MODIFY PLAN  
7-6-20 [[54](#)]

DEBTOR DISMISSED: 7/24/20

**Final Ruling:** No appearance at the August 25, 2020 hearing is required.  
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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. 58.

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 denied as moot.**

A review of the docket shows the case was dismissed on July 24, 2020. Therefore, this Motion is denied as moot.

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, Craig George Diez and Kristine Elizabeth Diez, 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 August 25, 2020 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 113.

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 modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, the debtor's Modified Chapter 13 Plan filed on July 20, 2020 (Dckt. 109) 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.

24. [19-21282](#)-C-13 KATHLEEN RAPISURA-PARDO CONTINUED MOTION FOR CONTEMPT  
[PLC-8](#) Peter Cianchetta AND/OR MOTION FOR SANCTIONS FOR  
VIOLATION OF THE AUTOMATIC STAY  
4-24-20 [[100](#)]

**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 39 days' notice was provided. Dckt. 105.

**The Motion For Contempt is ~~XXXXXX~~**

The debtor filed this Motion seeking to impose sanctions on alleged creditor Elite Acceptance Corp. ("Elite") for violation of the automatic stay.

The allegations generally are that Elite contacted the debtor regarding payment of a debt during the pendency of this case, and that after communications the creditor continued collection attempts on the premise that the debtors' husband (who also filed a Chapter 7 case, no. 19-25500, but which case was dismissed August 30, 2019) and not the debtor is liable for the debt.

**Elite's Responses**

Elite never filed an opposition to this Motion. Instead, a document requesting oral argument and for the court to take judicial notice was filed (Dckt. 113), supported by the Declaration of John Dumas Rochelle. Dckt. 114. Both documents were filed the day prior to the first hearing.

Elite's request for judicial notice is that it is not a creditor. The supporting declaration details communications with debtor's counsel, and notes the Elite's position that the debtor made misrepresentations by listing Elite as a creditor in this case.

After the first hearing, Elite filed a Statement noting that no opposition was filed to its request for judicial notice, and reiterating its request that it be noticed Elite is not a creditor in this case. Dckt. 120.

**July 7 Hearing**

At the July 7, 2020, hearing the court questioned whether Elite desired to supplement the record further, to which counsel for Elite represented that the presently filed pleadings were adequate. Dckt. 122, 123.

The court also noted that there was no evidence as to debtor's damages, including attorney fees. The court continued the hearing to allow debtor to file supplemental evidence by July 17, 2020.

**Elite's Supplemental Response**

Elite filed a Supplemental Response on August 17, 2020. Dckt. 131.

Counsel for elite argues it thought its request for judicial notice was being granted and this Motion denied at the July 7 hearing, and was surprised that the court requested debtor's counsel to supplement the record. Elite explains further it did not attend the August 11, 2020, hearing because the debtor's counsel did not supplement the record, and counsel thought this matter was dropped by the debtor.

Counsel for Elite requests the court reexamine this matter and issue an Order To Show Cause regarding debtor's fraudulent listing of Elite as a creditor.

### **Debtor's Supplemental Reply**

Debtor filed a Supplemental Reply and evidence on August 19, 2020. Dckts. 133-136. Debtor argues Elite's debt is a community debt; that Elite collected community funds to satisfy the debt; Elite filed a claim in this case claiming it was a creditor; Elite does not contest it made collection attempts; Elite never opposed confirmation of the Chapter 13 plan and has been collecting payments.

Debtor argues emotional damages of \$2,500 and attorney fees of \$5,996.00 were caused by Elite. Exhibit 5 (Dckt. 134) is an itemized billing statement from debtor's counsel. Debtor's counsel also filed his own declaration.

Still missing, however, is evidence (testimony from the debtor) as to what debtor's damages were. What has been provided by debtor's counsel is only his legal conclusion that the debtor suffered \$2,500 in emotional damages.

### **Discussion**

As stated at the prior hearing (and in the tentative ruling from the prior hearing that has been online and readily available for the review of Elite's counsel), Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

Here, Elite requests the court take notice that it is not a creditor as defined by 11 U.S.C. § 101(10) (A), and debtor Kathleen Ortiz Rapisura-Pardo not a "debtor" in the sense that she owes a debt to Elite.

But, both contentions are legal conclusions, not facts which can be subject to judicial notice. Whether the debtor and Elite here have ever entered into a debtor-creditor relationship is plainly not generally known and not readily determined from sources whose accuracy cannot reasonably be questioned. The court would have to be presented with evidence establishing facts that support those legal conclusions.

Therefore, Elite's request for judicial notice is denied.

Attached to the Declaration of John Dumas Rochelle as Exhibit A is a copy of the financing agreement, which was entered by the debtor's husband Mark Pardo. Dckt. 114 at p. 8. Presumably the creditor's argument is that

because debtor's name does not appear on the contract, that she is not liable on the debt. But, this presumption ignores that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." Cal. Fam. Code § 910. A "creditor" within the meaning of the Bankruptcy Code includes an entity that has a community claim. 11 U.S.C. § 101(10)(c).

Leaving aside the determination of whether debtor owes a debt to Elite, the court at the prior hearing noted that Elite filed Proof of Claim, No. 9, representing under penalty of perjury that it is a creditor in this case, and that it has a secured claim of \$5,804.33 that must be paid through the plan. The itemized statement filed in support of the Proof of Claim is a document with Elite's company header, and states "Debtor: Kathleen Ortiz Rapisura-Pardo."

The court also noted at the prior hearing that Elite is collecting on and has taken money in satisfaction of a claim, notwithstanding whether the claim is valid, that arose before commencement of the case.

Despite the court's position at the prior hearing, counsel for Elite represented that the record was sufficient in its current state.

### **Conclusion**

11 U.S.C. § 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. No objection was made to Proof of Claim, No. 9.

Therefore, the court finds that Elite has a claim against the debtor and is a "creditor" within the meaning of 11 U.S.C. § 101(10).

The court also finds that Elite violated the automatic stay and co-debtor stay provisions of 11 U.S.C. §§ 362 and 1301 by (1) sending a statement in February 2020; (2) making a collection call March 3, 2020; (3) making a collection call March 23, 2020; (4) making a collection call April 23, 2020; and (5) receiving funds of \$1,760.35 in satisfaction of its claim while the case was pending.

### **Evidence of Damages**

As stated above, evidence as to what debtor's damages were (testimony from the debtor) has still not been provided.

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 And Sanctions For Violation Of The Automatic Stay filed by the debtor, Kathleen Ortiz Rapisura-Pardo, 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 ~~xxxxxxx~~