

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 8, 2020 at 1:30 p.m.

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

1.	18-26725 -C-13	REBECCA BLAYLOCK	MOTION TO APPROVE LOAN
	GEL -1	Gabriel Liberman	MODIFICATION
			7-31-20 [29]

Final Ruling: No appearance at the September 8, 2020 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. 33.

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 Incur Debt is granted.

The debtor filed this Motion seeking approval of a loan modification with LoanCare, LLC, successor to Ditech Financial, LLC. The loan is secured by debtor's residence located at 2710 Tiber Drive, Sacramento, CA.

The principal on the new loan is \$182,456.13, which is to be paid at 4.750% interest over 480 months. The monthly payment will be \$1,727.57.

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 the debtor Rebecca Mae Blaylock 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 Rebecca Mae Blaylock is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 32.

Final Ruling: No appearance at the September 8, 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 49 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 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 debtor, Maria Escoto, 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 21, 2020 (Dckt. 41) 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.

3. [18-22346](#)-C-13 CHRISTINA BEGLEY
[VVF](#)-1 Kyle Schumacher

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
MOTION FOR ADEQUATE PROTECTION
8-6-20 [[52](#)]

HONDA LEASE TRUST VS.

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 33 days' notice was provided. Dckt. 59.

The Motion for Relief from the Automatic Stay is granted.
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Creditor Honda Lease Trust filed this Motion seeking relief from the automatic stay with respect to the debtor's 2017 Honda Civic.

The Movant argues cause for relief exists because debtor has defaulted on 3 postpetition payments, totaling (\$1,364.61). Dckt. 54. Movant also argues there is an insufficient equity cushion to adequately protect movant's \$14,368.08 claim (in fact, the vehicle is leased so the debtor has no equity), but no reference is made to relief pursuant to 11 U.S.C. § 362(d)(2).

Movant requests relief from the 4001 14-day stay because the vehicle, which is only leased, is rapidly depreciating, and debtor has not maintained payments. Movant also seeks relief from the codebtor stay of 11 U.S.C. § 1301.

Debtor's Reply

The debtor's counsel of record Kyle Schumacher filed an Opposition on August 25, 2020. Dckt. 60.

Counsel explains that debtor's actual counsel was Scott Sagaria who passed away, but that after said passing Mr. Schumacher rendered himself counsel of record by filing a pleading with his name (though not otherwise representing the debtor).

Counsel reports that he has advanced several letters from the creditor as to the defaults in postpetition payment, but has received no response. Counsel filed this Opposition to preserve debtors' rights.

Discussion

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.

Therefore, the Motion is granted.

Additionally, the court finds cause for relief from the 11 U.S.C. §

1301 codebtor stay.

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 Honda 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 that the motion is granted and 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 2017 Honda Civic, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Honda Civic, 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 request to terminate the co-debtor stay of Nicholas Begley of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

4. [20-23155](#)-C-13 CURTIS XU
[AP-1](#) Muoi Chea

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-28-20 [[14](#)]

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 48 days' notice was provided. Dckt. 17.

The Objection to Confirmation of Plan is XXXXXX

Creditor Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that the plan classifies Creditor's claim as Class 4 where there is a prepetition arrearage of \$6,009.37.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 18, 2020. Dckt. 22. The Opposition asserts that the debtor's girlfriend will pay an amount to cure the prepetition arrearage no later than August 31, 2020.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A., 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

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 35 days' notice. The Proof of Service shows that 53 days' notice was provided. Dckt. 38.

The Motion To Confirm is denied.

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

1. 11 U.S.C. §330(c) states that the debtor's plan payment must generate compensation to the Trustee in an amount not less than \$5.00. At a maximum compensation rate of 10%, the debtor's \$5.17 monthly payment will not generate that minimum compensation.
2. The plan does not propose paying off any claims.

DISCUSSION

The trustee argues that the plan is not feasible because the debtor is not paying any claims, and because the minimum trustee compensation is not provided for. But, the bigger question is whether debtor's Chapter 13 plan that proposes paying nothing to any creditor has been proposed in good faith.

In reviewing the debtor's Amended Schedules I and J, the court notes there is significant ambiguity as to what debtor's real income and expenses are.

For example, debtor appears to be paying \$500 a month towards debtor's model year 2006 vehicle. That amount is divided across \$200 for transportation as an individual expense on Schedule J, \$200 listed as a vehicle expense deducted from business income on Schedule I, and \$100 as a travel expense deducted from income.

The debtor also lists \$200 a month deducted income for "Repairs and maintenance." This potentially makes the monthly vehicle expense \$700 (it is unclear what else an attorney leasing an office would be repairing and maintaining for \$200 a month).

The debtor also lists several expenses together. Specifically, debtor states there is a \$1,483.21 monthly expense for:

House rent for kids
School tuition for daughter
School tuition for son
Books and uniforms
Electricity for kids house

Water for kids house
Food for fiancé and my kids
Cell phone for fiancé
Cell phone for daughter

By listing these expenses together the debtor has obfuscated what is being paid and prevented an assessment of whether the expenses are reasonable.

The debtor is also renting two or three locations judging by the \$600 rent for the business, \$550 for personal rent, and unstated "house rent for kids," all listed on the schedules. But, no leases are listed on Schedule G, or listed to be assumed in the plan. If there are in fact leases, then those lessors are creditors who were required to be served the Motion and Chapter 13 plan.

In considering the entirety of the circumstances, the court finds the Chapter 13 plan was not proposed in good faith. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(3).

It also appears the Motion was not served on all creditors, which is separate cause for denying the Motion.

The Motion is denied.

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, Tracy L. Wood, 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.

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. 25.

The Objection to Confirmation of Plan is Sustained.
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the debtor has \$36,329.00 in non-exempt assets, but proposes to pay only 5% of unsecured claims, which total \$19,318.45.

DISCUSSION

The debtor has \$36,329.00 in non-exempt assets. Dckt. 24. Because the plan proposes paying less than \$36,329.00 to unsecured claims, the plan does not be the liquidation test and is not confirmable. 11 U.S.C. § 1325(a)(4).

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.

Final Ruling: No appearance at the September 8, 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 35 days' notice was provided. Dckt. 91.

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 debtor, Brandi Lynn Dechaine, 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 22, 2020 (Dckt. 86) 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 September 8, 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 49 days' notice was provided. Dckt. 65.

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 debtor, Donnette Lynn DeSantis, 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 21, 2020 (Dckt. 64) 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 September 8, 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 47 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 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 debtor, Atesh Kumar Dayal, 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 23, 2020 (Dckt. 57) 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.