



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 9, 2024 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

January 9, 2024 at 1:30 p.m.

1. [23-23109](#)-C-13 GREGOIRE TONOUKOUIN MOTION TO CONFIRM PLAN
[TLA](#)-1 Thomas Amberg 11-16-23 [[31](#)]

Final Ruling: No appearance at the January 9, 2024 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 54 days' notice was provided. Dkt. 36.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 33) filed on November 16, 2023.

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, Gregoire Tonoukouin, 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 Chapter 13 Plan (Dkt. 33) meets the requirements of

January 9, 2024 at 1:30 p.m.

Page 1 of 35

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.

Final Ruling: No appearance at the January 9, 2024 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 71 days' notice was provided. Dkt. 37.

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 Confirm filed by the debtor, Mario Barba-Gutierrez, 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 Modified Chapter 13 Plan (Dkt. 34) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan 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 trustee will submit the proposed order to the court.

3. [23-23915](#)-C-13 MIKELL/LARRY LEYBA
[LGT](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-15-23 [[19](#)]

Thru #4

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. 22.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 meeting has not yet been completed;
2. Debtor not provided requested pay advices; and
3. Debtor has not amended the Schedule I and J

DISCUSSION

A review of the docket shows that the debtor appeared at the continued 341 meeting and the meeting was concluded.

A review of the docket also shows that an amended Schedule I and J was filed on December 29, 2023. Dkt. 35.

However, the debtor has not provided the trustee with all required pay advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. 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, Lilian G. Tsang, 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.

4. [23-23915](#)-C-13 MIKELL/LARRY LEYBA
[SKI](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY TD BANK, N.A.
12-18-23 [[23](#)]

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 23 days' notice was provided. Dkt. 27.

The Objection to Confirmation of Plan is sustained.

Creditor TD Bank N.A. ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan's proposed interest rate on Creditor's secured claim is too low; and
2. The plan does not specifically state that Creditor does not have to release its lien upon completion of the Plan or entry of discharge because there is a non-filing co-debtor on the contract with Creditor.

DISCUSSION

Creditor opposes confirmation on the basis that the plan proposes paying its claim at (9%) nine percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.50%, plus a 1.25% risk adjustment, for a 9.75% interest rate.

That is reason to deny confirmation. 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 TD 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 sustained.

5. [23-23320](#)-C-13 TRINIDAD SANCHEZ
[LGT](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
11-8-23 [[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 26 days' notice was provided. Dkt. 17.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor has failed to provided all business documents;
2. Plan may not provided for all of debtor's disposable income;
3. The plan relies on an improper motion to value collateral; and
4. The plan does not provide for a monthly dividend for attorney's fees.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on November 17, 2023. Dkt. 18. The debtor represents he has provided all available business documents. Debtor contends that he has amended Form 122C-1 with the debtor's detailed monthly income and the distribution to unsecured creditors should be no more than 6.8%. Debtor concedes that the collateral to SAFE Credit Union is not subject to a motion to value and proposes to increase the dividend to creditor to \$360.00 per month and a dividend of \$100.00 for attorney's fees.

RESPONSE

The Trustee responded on December 1, 2023. Dkt. 21. The Trustee responded that debtor has provided the requested business documents and the clarification on the past due priority claims. However, the other issues remain unresolved and the Trustee continues to object to confirmation.

DISCUSSION

The debtor has not filed all business documents including six months of profit and loss statements and proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3).

That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

The debtor has not provided the trustee with all required information to determine the debtor's monthly income. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. 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, Lilian G. Tsang, 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.

6. [23-22836](#)-C-13 ARTHUR ROBINSON
[EMU](#)-2 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-14-23 [[47](#)]

TIA JOHNSON 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 70 days' notice was provided. Dkt. 58.

The Motion for Relief from the Automatic Stay is xxxxxx.

Creditor, Tia Renae Johnson ("Movant"), filed this Motion seeking relief from the automatic stay to allow a complaint for partition in Sacramento County Superior Court (case number 23-CV-003724) (the "Litigation") to be concluded.

Movant argues that she owns at least 50% of the property even though she does not live there, and the debtor's failure to pay the mortgage has caused stress and damaged her credit. Declaration, Dkt. 49. She further asserts that the debtor has changed the locks and prevented her from entering the property.

OPPOSITION

The debtor filed a response on December 28, 2023. Dkt. 59. Debtor represents that the Movant violated the automatic stay under 11 U.S.C. § 362(a) when she filed a motion to compel in the Movant's state court action on September 1, 2023.

The debtor further asserts that the debtor's plan intends to cure the first mortgage creditor's claim and pay the movant her claim over the life of the plan.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc.* (*In re Advanced Med. Spa Inc.*), No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8-9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc.* (*In re Brotman Med. Ctr., Inc.*), No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such

relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. See *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

At the hearing **xxxxxxxxxx**

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 Tia Renae Johnson ("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**

7. [23-23636](#)-C-13 LISA/SEAN BYRD
[LGT](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-6-23 [[29](#)]

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 34 days' notice was provided. Dkt. 32.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 Meeting has not been concluded;
2. Debtor, Lisa Byrd, has failed to provide the Trustee with a copy of her 2022 income tax returns;
3. Debtors have failed to amend their Schedules I and J; and
4. Debtors have failed to explain how the loss of DSO payments within the pendency of the Chapter 13 case will be supplemented.

DISCUSSION

Debtors did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not explained the loss of the DSO payments to assist the Chapter 13 Trustee in determining whether the plan was filed in good faith. 11 U.S.C. § 1325(a)(3).

That is reason to deny confirmation. 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, Lilian G. Tsang, 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.

8. [23-23636](#)-C-13 LISA/SEAN BYRD
[PGM](#)-1 Peter Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
11-30-23 [[24](#)]

Final Ruling: No appearance at the January 9, 2024 hearing is required.

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

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 Approve Loan Modification is granted.

Debtors filed this Motion seeking authority to modify debt with Carrington Mortgage Services, LLC. The lender has offered debtors a partial claims mortgage loan modification.

The proposed financing is in the principal amount of \$27,321.04, to be paid on, or before, July 1, 2051.

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 Approve Loan Modification filed by debtors, Lisa and Sean Byrd, 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.

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 71 days' notice was provided. Dkt. 32.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 29) filed on October 30, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 39) on December 26, 2023, opposing confirmation on the following grounds:

1. Creditor, Real Time Resolutions, filed a proof of claim listing prepetition arrears of \$136,161.05, which is more than the amount to be paid in the plan.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as the Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtor, Eileen Argel, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

10. [23-23752](#)-C-13 VASILIOS TSIGARIS
[LGT](#)-1 Marc Caraska

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-6-23 [[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 34 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor has failed to provide business documents, including copies of debtor's business income tax returns for 2021 and 2022;
2. Trustee needs a detailed monthly analysis of debtor's business income;
3. Debtor has failed to amend the number of people in his household;
4. The plan is not feasible;
5. Debtor has failed to file the Attachment to Schedule I;
6. Debtor has failed to properly complete the means test; and
7. Debtor has failed to list all businesses that debtor has an ownership interest in and fails to list all bank statements.

DISCUSSION

The debtor has supplied insufficient information relating to the his business, including all businesses he has an ownership in and all income from those businesses, to assist the Chapter 13 Trustee in determining the feasibility of the debtor's plan.

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not filed all business documents including two years of tax returns and six months of bank account statements.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

That is reason to deny confirmation. 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, Lilian G. Tsang, 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.

11. [23-23055](#)-C-13 SUSANA FULCHER
[WSC](#)-1 Julius Cherry

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
WOODSIDE CREDIT, LLC
10-13-23 [[16](#)]

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 46 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is sustained.

Creditor Woodside Credit, LLC ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The proposed plan does not provide for adequate protection payments to creditor;
2. The plan proposes to pay administrative and attorneys' fees in full before paying creditor's claim; and
3. The plan proposes an improper interest rate on creditor's claim.

At the prior hearing the Trustee represented she still had issues with the feasibility of the plan based upon the interest rate and filed proofs of claim. Creditor represented it continued to have issues with the plan payments. The hearing was continued to allow the debtor, Creditor and Trustee to work through the issues.

DISCUSSION

Creditor opposes confirmation on the basis that the plan proposes paying its claim at five percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.50%, plus a 1.25% risk adjustment, for a 9.75% interest rate.

That is reason to deny confirmation. 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 Woodside Credit, LLC, 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.

12. [23-21562](#)-C-13 EMILIA/EMIL ARDELEAN
[CLH](#)-2 Stephan Brown

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
10-10-23 [[46](#)]

No Tentative Ruling:

The Objection 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. 50.

The Objection to Claimed Exemptions is xxxxxxxxxxxx

Creditors Carmelita Mancina and Houria El Massioui (Creditors) filed this Objection objecting to the debtors' claimed exemptions pursuant to Cal. Code Civ. Proc. § § 704.220 and 704.225 because the debtors have exempted more than the minimum amount and have not demonstrated that the additional amounts are necessary for the debtors' support.

The debtors filed an opposition (dkt. 60) on October 31, 2023 asserting that they have amended the Schedule C to reflect the amount exempted under C.C.C.P § 704.220. Debtors further contend that the amended amount exempted under C.C.C.P § 704.225 is necessary to support them because they solely rely on social security for their income, already receive significant support from their son, and have medical expenses due to debtor's throat cancer.

The prior hearing on November 14, 2023 was continued to allow the parties to provide evidence on this issue.

DISCUSSION

At the hearing xxxxxxxx

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 Claimed Exemptions filed by Carmelita Mancina and Houria El Massioui having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is xxxxxxxx

13. [23-21562](#)-C-13 EMILIA/EMIL ARDELEAN
[CLH](#)-4 Stephan Brown

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-27-23 [[81](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 63 days' notice was provided. Dkt. 84.

The Objection to Claimed Exemptions is xxxxxxxxxxxx

Creditors Carmelita Mancina and Houria El Massioui (Creditors) filed this Objection renewing their objection to the debtors' claimed exemptions and amended claim of exemptions. Creditors represent that the debtors have also amended their homestead exemption without stating a specific amount that they are exempting. Creditors assert that debtors have not met their burden to support their claim of exemptions.

The debtors filed an opposition (dkt. 99) on December 22, 2023 asserting that they have amended the Schedule C to reflect the exact amount of \$521,625.00. Debtors represent this amount was obtained by using the median home price in Sacramento County found at the California Association of Realtors website. Dkt. 100, Exhibit A.

Debtors further contend that the amended amount exempted under C.C.C.P § 704.225 is necessary to support them because they solely rely on social security for their income, already receive significant support from their son, and have medical expenses due to debtor's throat cancer.

Creditors filed a response on January 2, 2024. Dkt. 110. Creditors represent they no longer object to the debtors homestead objection under CCCP 704.730. However, Creditors still oppose the exemption claimed under CCCP 704.225 and 704.220.

DISCUSSION

At the hearing xxxxxxxx

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 Claimed Exemptions filed by Carmelita Mancina and Houria El Massioui having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is xxxxxxxx

14. [23-21562](#)-C-13 EMILIA/EMIL ARDELEAN
[LGT](#)-1 Stephan Brown

OBJECTION TO HOMESTEAD
EXEMPTION
11-8-23 [[72](#)]

Final Ruling: No appearance at the January 9, 2024 hearing is required.

The Motion is dismissed without prejudice.

On December 22, 2023, the movant filed an Ex Parte Motion to Dismiss. Dkt. 97. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

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

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 filed by the Chapter 13 Trustee, Lilian G. Tsang, having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed without prejudice.

15. [19-27468](#)-C-13 EDDIE/CARYN GARDNER
[AP-2](#) Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
10-30-23 [[197](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION VS.

Thru #16

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 29 days' notice was provided. Dkt. 203.

The Motion for Relief from the Automatic Stay is XXXXXXXX

HSBC Bank USA, National Association as Trustee for Ellington Loan AcquisitionTrust 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 \$17,943.12 postpetition payments. Declaration, Dkt. 199.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 14, 2023. Dkt. 204. Debtor asserts a modified plan will be filed that cures the postpetition arrears.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response on November 14, 2023. Dkt. 207, representing that the debtor is delinquent on plan payments and payments to Nationstar Mortgage are in arrears in the amount of \$9,187.02.

This matter was continued at the last hearing to see if the debtors would be able to confirm a modified plan.

DISCUSSION

At the hearing XXXXXXXX

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 USA, National Association as Trustee for Ellington Loan AcquisitionTrust 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 the automatic stay provisions of 11 U.S.C. § 362(a) are ~~xxxxxxx~~

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 54 days' notice was provided. Dkt. 214.

The Motion to Modify Plan is denied.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 213) filed on November 16, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 218) on December 22, 2023, opposing confirmation on the following grounds:

1. Debtor is delinquent under the proposed plan;
2. The plan is not feasible and does not provide for all arrears to creditor, Nationstar;
3. The amended Schedule I provides for a higher amount for "required payments of retirement fund loans" than the original file Schedule I;
4. The Trustee has requested the debtors' most recent 6 months of pay advices, which have not been provided.

DISCUSSION

The debtor is \$8,000.00 delinquent in plan payments. Declaration, Dkt. 219. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The plan mathematically requires a payment of \$8,509.00 per month, which is greater than the proposed \$8,000.00 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not provided the trustee with all required pay

advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Modify Plan filed by the debtors, Eddie 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 denied, and the plan is not confirmed.

17. [23-22374](#)-C-13 WILLIE WATSON
[LGT](#)-1 Peter Cianchetta

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-2-23 [[104](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 68 days' notice was provided. Dkt. 107.

The Objection to Claimed Exemptions is overruled as moot.

The Chapter 13 Trustee filed this Objection to the debtor's claimed exemptions pursuant to California Civil Code of Procedure § 704 for the following reasons:

(a) Debtor has improperly claimed a checking account exempt under a section that exempts public retirement funds;

(b) Debtor has improperly claimed an account exempt under a section that exempts public retirement funds; and

(c) Debtor has removed a brokerage account from Schedule C without explanation as to why the account was removed.

DISCUSSION

At a prior hearing on December 4, 2023, the court sustained an objection by a creditor on the same exemptions objected to in this motion. A review of the docket shows that no information has since been provided and the debtor's Schedule C has not been amended. Therefore, since the claimed exemptions have previously been disallowed the objection is overruled 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 Objection to Claimed Exemptions filed by the Chapter 13 Trustee, Lilian G. Tsang, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is overruled as moot.

Final Ruling: No appearance at the January 9, 2024 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 77 days' notice was provided. Dkt. 47.

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

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 46) filed on October 24, 2023.

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, Grant Douglas Haney, III, 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 Chapter 13 Plan (Dkt. 46) 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.

19. [22-21477](#)-C-13 VICTOR NAVARRO AND CONTINUED MOTION TO MODIFY PLAN
FF-[3](#) KRISTINA ZAPATA NAVARRO 8-25-23 [[83](#)]
Gary Fraley

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 89.

The Motion to Modify Plan is denied.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 87) filed on August 25, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 102) on September 18, 2023, opposing confirmation on the following grounds:

1. The debtor is delinquent \$7,765.00 and the plan fails to suspend the delinquency;
2. The plan fails the liquidation test;
3. The plan provides for the incorrect amount of postpetition arrears to Rushmore Loan Management;
4. The plan is not feasible, whether the motion for compensation below is approved or not;
5. The plan incorrectly accounts for payments already made to the Trustee; and
6. The debtors' motion and declarations are inconsistent as to debtor's income and expenses.

The Chapter 13 Trustee filed a status report (dkt. 124) on January 3, 2024 representing that all of the issues above, except as to the inconsistencies related to the Schedules I and J and the debtor's statements that his employer is covering vehicle expenses.

DISCUSSION

The motion was continued from the prior hearing to allow the debtor and the trustee to see if they could work out the issues raised in the opposition. A review of the docket shows that nothing has been filed since the hearing on November 28, 2023.

The debtor has not provided the trustee with all required pay advices. 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not supplied insufficient information relating to the

debtors income and expenses to assist the Chapter 13 Trustee in determining if the plan is feasible.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Modify Plan filed by the debtors, Victor Navarro, Jr. and Kristina Navarro, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

20. [23-20784](#)-C-13 DARIUS HUDSON OBJECTION TO CLAIM OF LVNV
[GC-2](#) Julius Cherry FUNDING, LLC / RESURGENT
ACQUISITIONS, LLC, CLAIM NUMBER
3
11-7-23 [[32](#)]

Final Ruling: No appearance at the January 9, 2024 hearing is required.

The parties having stipulated to dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without a court order, and the matter is removed from the calendar.**

Final Ruling: No appearance at the January 9, 2024 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. Dkt. 41.

The trustee having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and no other opposition has been filed, the matter will be resolved without oral argument.

The Motion to Confirm is granted.

The debtors filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 40) filed on November 21, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 45) on December 26, 2023, opposing confirmation because the plan is not feasible.

Subsequently, the Chapter 13 Trustee filed a notice of dismissal of opposition pursuant to FRCP 41, FRBP 9014 & 7041. Dkt. 48.

No other 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, Brian and Stephanie Pace, 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' Chapter 13 Plan (Dkt. 40) 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.

22. [23-22893](#)-C-13 CHERYL RYCE MOTION TO CONFIRM PLAN
[WLG](#)-1 Nicholas Wajda 11-13-23 [[39](#)]

Final Ruling: No appearance at the January 9, 2024 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 57 days' notice was provided. Dkt. 45.

The Motion to Confirm is denied as moot.

On January 3, 2024, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtor, Cheryl Ryce, 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, and the proposed Chapter 13 Plan is not confirmed.

23. [23-23897](#)-C-13 PAUL/GLENDA DE LA TORRE
[LGT](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
12-15-23 [[15](#)]

Thru #24

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 25 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtors failed to appear at the 341 meeting; and
2. Debtors have failed to explain the voluntary contributions to joint debtor's retirement plan in the debtors' schedule I.

DISCUSSION

A review of the docket shows that the debtors both appeared at the continued 341 meeting held on January 4, 2024. The 341 meeting has been continued to January 25, 2024.

The debtor has supplied insufficient information relating to the debtors' scheduling a voluntary deduction to joint debtor's retirement plan to assist the Chapter 13 Trustee in determining whether this is a reasonable expense.

That is reason to deny confirmation. 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, Lilian G. Tsang, 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.

24. [23-23897](#)-C-13 PAUL/GLENDA DE LA TORRE MOTION BY PAULDEEP BAINS TO
[PSB](#)-1 Pauldeep Bains WITHDRAW AS ATTORNEY
12-20-23 [[19](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service was not completed and does not show when service of process was executed. Dkt. 23.

The Motion to Withdraw as Attorney is xxxxxx.

Pauldeep Bains ("Movant"), counsel of record for Paul and Glenda de la Torre ("Debtors"), filed a Motion to Withdraw as Attorney as Debtors' counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16;
- B. Debtors have made threatening, aggressive and rude communications with counsel and his staff; and
- C. Counsel cannot effectively represent Debtor due to aggressive, threatening and rude communications.

APPLICABLE LAW

Permissive withdrawal is limited to certain situations, including:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(4) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

Cal. R. Prof'l. Conduct 1.16(b)(4)(d).

DISCUSSION

At the hearing xxxxxxxx

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 Withdraw as Attorney filed by Pauldeep Bains ("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 to Withdraw as Attorney
is **XXXXXXXXXX**