

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**January 10, 2023 at 1:30 p.m.**

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1. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ CONTINUED NOTICE OF DEFAULT AND  
Peter Macaluso MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
9-9-22 [[63](#)]

**Thru #3**

**Tentative Ruling:**

The Motion was ordered by the court to be heard on November 8, 2022 at 1:30p.m. Dkt. 75.

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
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The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor is \$11,256.00 delinquent in plan payments. At the prior hearing, counsel for the debtor represented that the proceeds from the sale of the property would cure the default amount.

At the prior hearing, debtor's counsel represented that the house is up for sale, and proceeds from the sale will cure the default. Debtor asserted that the first lien holder did not file a demand in escrow. Debtor's counsel represented that a new plan would be filed that addressed the issues.

A review of the docket shows the debtor filed a modified plan and corresponding Motion To Modify on November 28, 2022. Dkts. 81 & 84.

Because it appears debtor is actively prosecuting the case, the Motion is denied without prejudice.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is denied without prejudice.

**January 10, 2023 at 1:30 p.m.**

2. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ MOTION TO MODIFY PLAN  
[PGM](#)-3 Peter Macaluso 11-28-22 [[81](#)]

**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 43 days' notice was provided. Dkt. 86.

**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 Plan filed by the debtor, Maria del Socorro Ortiz, 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. 84) 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. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ MOTION TO SELL  
[PGM](#)-4 Peter Macaluso 12-9-22 [[91](#)]

**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 32 days' notice was provided. Dkt. 95.

**The Motion to Sell is granted.**

Debtor, Maria Ortiz, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 7566 Phoenix Park Dr., Sacramento, California ("Property").

The proposed purchaser of the Property is Salina Hou-Yan Lee, and the proposed purchase price is \$210,000.00.

**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 because the proceeds will be used to fund the plan and help to pay creditors.

**Broker's Commission**

Movant has estimated that a 5 percent broker's commission from the sale of the Property will equal approximately \$10,500.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), 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 to Sell Property filed by Maria del Socorro Ortiz ("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. 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.

**IT IS FURTHER ORDERED** that Movant is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

4. [21-24304](#)-C-13 ARMANDO/BETH DEL REAL  
[GC-1](#) Julius Cherry

CONTINUED OBJECTION TO CLAIM OF  
WELLS FARGO BANK, N.A., CLAIM  
NUMBER 17  
10-5-22 [[25](#)]

Thru #6

**Final Ruling:** No appearance at the January 10, 2023 hearing is required.  
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The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

5. [21-24304](#)-C-13 ARMANDO/BETH DEL REAL CONTINUED MOTION TO COMPEL  
[GC-2](#) Julius Cherry 11-15-22 [[34](#)]

**Final Ruling:** No appearance at the January 10, 2023 hearing is required.  
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The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

6. [21-24304](#)-C-13 ARMANDO/BETH DEL REAL MOTION TO COMPEL  
[GC-3](#) Julius Cherry 11-21-22 [[39](#)]

**Final Ruling:** No appearance at the January 10, 2023 hearing is required.  
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The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

7. [17-27307](#)-C-13 KIMBERLY WELCH MOTION TO SELL  
[RWH](#)-6 Ronald Holland 12-21-22 [[95](#)]

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 99.

**The Motion to Sell is ~~xxxxxx~~.**

Debtor, Kimberly Welch, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 8775 Kilkenny Ct., Elk Grove, CA ("Property").

The proposed purchasers of the Property are Stephan and Kira Wilks, and the proposed purchase price is \$550,000.

**OPPOSITION**

The Chapter 13 Trustee opposes to the extent that an escrow statement was not provided with the motion and he cannot determine whether the sale of the property will provide enough funds to pay off the remaining amount due. However, the debtor's declaration states that she believe the sale of the property will yield approximately \$290,000 in net proceeds, which will be more than enough to pay off the remaining balance.

**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: ~~xxxxxxxxxxxxxxxx~~.

**Broker's Commission**

Movant has not estimated a percent broker's commission from the sale of the Property.

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 Debtor, Kimberly Welch, ("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 ~~xxxxxxxxxx~~



**IT IS FURTHER ORDERED** that Movant is authorized to pay a real estate broker's commission in an amount not more than **xxx** percent of the actual purchase price upon consummation of the sale.

8. [20-23327](#)-C-13 DOUGLAS BRAUNER  
[RDG](#)-1 Mark Wolff

OBJECTION TO CLAIM OF  
SACRAMENTO COUNTY TAX  
COLLECTOR, CLAIM NUMBER 12-1  
11-28-22 [[69](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 71.

**The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.**

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 12-1, filed by Sacramento County Tax Collector was filed late and should be disallowed.

The deadline for all governmental units for filing proofs of claim in this case is December 29, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Proof of Claim subject to this Objection was filed October 31, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 12-1 of Sacramento County Tax Collector is sustained, and the claim is disallowed in its entirety.

**Final Ruling:** No appearance at the January 10, 2023 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 49 days' notice was provided. Dkt. 74.

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. 71) filed on November 21, 2022.

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, Henry Burl Reed, 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. 71) 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. [22-21135](#)-C-13 ROBERT KOEHLER  
[DNL](#)-3 Eric Schwab

CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7  
7-28-22 [[34](#)]

Thru #11

**Tentative Ruling:**

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

**The Motion to Convert Case to Chapter 7 is ~~xxxxxx~~**

This Motion to Convert the Chapter 13 bankruptcy case of Robert Francis Koehler ("Debtor") has been filed by Drew and Elizabeth Prinz ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor filed the current bankruptcy case in an inequitable manner and unfairly manipulated the Bankruptcy Code because he dismissed his first bankruptcy case after substantial time and expense was devoted to an Adversary Proceeding and contested matters to decide an exception to discharge, conversion of case to Chapter 7 and objections to claims of exemption.
- B. The debtor filed in bad faith because his second case was filed 23 days after the first bankruptcy case was voluntarily dismissed.
- C. The debtor's intent was to only defeat the state court litigation because both the first and second bankruptcy cases were filed within hours of adverse rulings by the state court.
- D. The debtor's behavior is egregious because he is using the bankruptcy system to avoid paying a judgment to an elderly client.

Movant also contends that conversion, rather than dismissal, is in the best interest of creditors because dismissal will require the movant to seek satisfaction of their claims through alternative means, whereas Chapter 7 will provide payment to the Movant as quickly as reasonably possible. Movant further argue that liquidation is the better alternative because the Debtor has a significant amount of non-exempt assets available to pay movant.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 11, 2022. Dkt. 41. Debtor

states that movants and debtor agreed to stay the associated adversary proceeding until the cross appeals in state court have been resolved and there is no prejudice to creditors - who are the only creditors in the case - because there is sufficient equity beyond the debtor's claimed homestead exemption to pay creditors' judgement in full with interest and attorney fees. The debtor further contends that conversion could cause irreparable harm to debtor if liquidation occurs before the appeals are resolved in state court.

## **PRIOR HEARING**

At the prior hearing on November 22, 2022, the motion was continued to allow the debtor time to file an amendment to the plan and would satisfy all of the Court's concerns whether cause exists to either convert to Chapter 7 or dismiss the case.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing Ho v. Dowell (In re Ho), 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. Drummond v. Welsh (In re Welsh), 711 F.3d 1120, 1123 (9th Cir. 2013) (citing Leavitt v. Soto (In re Leavitt), 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. Nady v. DeFrantz (In re DeFrantz), 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing In re Leavitt, 171 F.3d at 1224).

## **DISCUSSION**

At the hearing **xxxxxxx**

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 Convert the Chapter 13 case filed by Drew and Elizabeth Prinz ("creditor") 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 Convert is ~~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 42 days' notice was provided. Dkt. 71.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 70) filed on November 28, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 75) on December 22, 2022, opposing confirmation on the following grounds:

1. Plan fails to indicate a plan term; and
2. Plan allows a distribution for administrative expenses but does not allow a distribution to Creditor Prinz.

**DISCUSSION**

Trustee asserts he is not able to administer the plan as proposed as suggests language in the order confirming that the Trustee shall disburse funds to Counsel for Judgement Creditor to be held in his trust account.

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, Robert Francis Koehler, Jr., 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.

12. [21-23637](#)-C-13 JASON GRAHAM  
[SLH](#)-2 Seth Hanson

MOTION TO SELL  
12-5-22 [[25](#)]

**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 36 days' notice was provided. Dkt. 29.

**The Motion to Sell is granted.**

Debtor, Jason Graham, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to ratify the sale of a 2019 Can-Am Spyder ("Property").

The purchaser of the Property is RumbleOn.com, and the purchase price is \$14,000.

**DISCUSSION**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale was an arms-length transaction, the debtor's plan pays 100% dividend to general unsecured creditors, and the debtor only needs one vehicle.

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 Jason Graham ("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. 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.



13. [22-23139](#)-C-13 NICOLAS/TAVIFA GONTAR  
[MS-1](#) Mark Shmorgon

MOTION TO VALUE COLLATERAL OF  
ONEMAIN FINANCIAL GROUP, LLC  
12-2-22 [[10](#)]

**Final Ruling:** No appearance at the January 10, 2023 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 39 days' notice was provided. Dkt. 13.

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).

<b>The Motion to Value is Granted.</b>
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The debtors filed this Motion seeking to value the portion of Onemain Financial Group, LLC's ("Creditor") claim secured by the debtor's property commonly known as a 2014 Mitsubishi Mirage ES Hatchback 4D (the "Property").

The debtors have presented evidence that the replacement value of the Property at the time of filing was \$5,200.00. Declaration, Dckt. 12.

**DISCUSSION**

Upon review of the record, the court finds the value of the Property is \$5,200. There are no of senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$5,200.00 per 11 U.S.C. § 506(a).

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 Value Collateral and Secured Claim filed by the 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by property commonly known as 2014 Mitsubishi Mirage ES Hatchback 4D (the "Property")

is determined to be a secured claim in the amount of \$5,200.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

14. [22-22847](#)-C-13 RAVINESH/SHARITA PAL  
[RDG](#)-1 Jason Borg

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-20-22 [[13](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 16.

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

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

1. The 341 Meeting of Creditors has not been held;
2. Debtor's Schedule J includes an expense for a vehicle that is not listed in the debtor's Schedule A; and
3. The plan does not fully provided for the IRS's filed proof of claim.

**DISCUSSION**

Debtors appeared but their counsel did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 and were unable to be questioned. Attempting to confirm a plan while failing to 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 demonstrated the plan is feasible because claims filed in the case are greater than scheduled. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not explained the expense of the 2016 Toyota Rav4 and has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining whether the debtors own the vehicle.

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, 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.

15. [22-22755](#)-C-13 SANO HAR LAL  
[RDG](#)-1 Thomas Moore

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D GREER  
12-7-22 [[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, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan misclassified the claim of Santander Consumer USA as a Class 4 claim;
2. Debtor has not filed the attachment to Schedule I with the debtor's business income and expenses;
3. The amount owed to debtor's attorney is inconsistent between the Disclosure of Compensation and the Rights and Responsibilities, and the amount to be paid to the debtor's attorney through the plan is not enough to pay during the term of the plan;
4. The plan fails the liquidation test; and
5. Debtor has not amended his schedules or provided an explanation for the misc. expense on Schedule J, line #21.

**DISCUSSION**

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed because the claim of Santander Consumer USA is improperly classified as a class 4 claim. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not filed all business documents including the attachment to Schedule I. 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 non-exempt assets totaling 4,330.37. The plan provides for a 100 percent dividend to unsecured claims, which is less than the 100% percent dividend plus interest at the Federal Judgment Rate necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

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, 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.

16. [22-22855](#)-C-13 CHRISTOPHER CLEMONS  
[MWP](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF  
PLAN BY COASTAL CAPITAL GROUP  
LLC  
12-14-22 [[19](#)]

Thru #18

**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 27 days' notice was provided. Dkt. 23. **The Movant has not provided proof of service using the Official Certificate of Service Form (Form EDC 007-005) pursuant to Local Rule 7005-1.**

<b>The Objection to Confirmation of Plan is sustained.</b>
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Creditor, Coastal Capital Group LLC, ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor proposes paying the amount of the claim at an interest rate of 6% over the plan term rather than the contractual rate of 13%.

**DISCUSSION**

Creditor opposes confirmation on the basis that the plan proposes paying its claim at 6 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, 7.00%, plus a 1.25% risk adjustment, for a 8.25% 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 Coastal Capital Group 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.



17. [22-22855](#)-C-13 CHRISTOPHER CLEMONS  
[RDG](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D GREER  
12-20-22 [[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 21 days' notice was provided. Dkt. 27.

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

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

1. The plan does not provide for arrear amounts, interest rate on arrears, or arrears dividend for any of the five class 1 creditors; and
2. Based on testimony at the 341 meeting, creditors may have been misclassified 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 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).

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, 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.

18. [22-22855](#)-C-13 CHRISTOPHER CLEMONS  
[RMP](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF  
PLAN BY REAL TIME RESOLUTIONS,  
INC.  
12-21-22 [[28](#)]

**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 20 days' notice was provided. Dkt. 31.

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

Creditor, Real Time Resolutions, Inc., ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide for payment of the pre-petition arrears and improperly crams down a payment;
2. The plan is not feasible; and
3. Debtor is incapable of reorganization.

**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 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).

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 Real Time Resolutions, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

**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 75 days' notice was provided. Dkt. 101.

**The Motion to Modify Plan is Denied.**

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 97) filed on October 27, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 102) on December 21, 2022, opposing confirmation on the following grounds:

1. Debtor is delinquent in plan payments; and
2. The plan is not proposed in good faith because debtor incorrectly accounts for payments made to the Trustee.

The debtor responded (dkt. 105) to the Trustee's opposition representing she planned on being current on or before the hearing date, and the debtor's payment on October 24 was intended to be a partial payment towards November's payment.

**DISCUSSION**

The debtor is \$2,700 delinquent in plan payments. Declaration, Dkt. 103. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Modify Plan filed by the debtor, Tema Robinson, 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. [22-20471](#)-C-13 NATHANIEL JONES  
[PGM](#)-3 Peter Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
11-21-22 [[78](#)]

Thru #21

**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 50 days' notice was provided. Dkt. 82.

**The Motion to Approve Loan Modification is Granted.**

Debtor, Nathaniel Jones, filed this Motion seeking authority to modify his loan with Real Time Resolutions, Inc.

The proposed financing is in the principal amount of \$112,803.07, paid at 5% interest over a 10 year term. Monthly payments are proposed to be \$1,196.45.

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 Nathaniel Jones 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)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 75.

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the Chapter 13 plan on October 11, 2022.

A review of the docket confirms the proposed Chapter 13 plan was denied confirmation, and no plan is set for confirmation hearing. Dkts. 70 & 71.

Failure to confirm a plan and maintain plan payments constitute evidence of unreasonable delay by the debtor that is prejudicial to creditors.

The Motion also argues debtor is \$800 delinquent in plan payments, which is supported by declaration. Dkt. 74.

Debtor filed an opposition representing contrary to the Trustee's declaration he has remitted timely payments to the Trustee each month. Debtor further asserts that he has negotiated a loan modification on the second mortgage and is negotiating a modification of the first mortgage. Debtor asserts an amended plan will be filed on or before January 10, 2023. Finally, debtor requests that the motion to dismiss be continued for 90 days.

At the prior hearing, counsel for the debtor represented that plan payments were in the mail. Counsel further represented that he was awaiting a motion to modify the loan, Item 20 above, before submitting a new plan, and that after the hearing he would be filing a new plan where the debtor would be current.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion, is in the best interest of creditors and the Estate.

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 20.

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

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

1. Debtor has failed to provide personal and corporate tax returns, and his non-filing spouses pay advices;
2. The plan is contingent upon a monthly contribution of \$2,500 that is not supported by a declaration from the unidentified person providing the contribution; and
3. Debtor has not provided information relating to the transfer of his restaurant prior to filing his case to his son.

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on January 2, 2023. Dkt. 21. Debtor represents his 2021 tax returns and non-filing spouses pay advices were provided to the Trustee. Debtor further represents he provided a signed statement by debtor stating his beer and wine license was transferred in 2019.

**DISCUSSION**

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 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 explained the transfer of his restaurant and has supplied insufficient information relating to the transfer of the restaurant to assist the Chapter 13 Trustee in determining the feasibility of the plan.

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, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.



23. [22-22787](#)-C-13 AMRIT LAL  
[RDG](#)-1 Anh Nguyen

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-21-22 [[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 20 days' notice was provided. Dkt. 19.

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

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

1. Debtor is \$16,867.00 delinquent in plan payments and debtor may be unable or unwilling to make the full plan payments;
2. The plan does not provide an arrear amounts, interest on arrears, or arrears dividend to class 1 claims;
3. The plan fails to state a dividend for attorney fees;
4. The plan improperly reduces the secured claim of WBL California; and
5. The debtor has not filed the Attachment to Schedule I.

**DISCUSSION**

The debtor is \$16,867.00 delinquent in plan payments. Declaration, Dkt. 18. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 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 demonstrated the plan is feasible because the plan terms do not provide a dividend for attorney fees and may require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The lien on the Vehicle's title secures a purchase-money loan incurred on June, 2022, which is less than 910 days prior to filing of the

petition. 11 U.S.C. § 1325(a) (9) (hanging paragraph).

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, 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.

24. [22-22793](#)-C-13 DONNETTE DESANTIS  
[RDG](#)-1 Richard Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-19-22 [[29](#)]

Thru #25

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 32.

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

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

1. The plan relies on a class 2 claim being reduced based on the value of collateral without an order on a motion to value having been entered.

**DISCUSSION**

The plan proposes valuing the secured claim of Capital One Auto Finance. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

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, 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.

25. [22-22793](#)-C-13 DONNETTE DESANTIS  
RJ-2 Richard Jare

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE AUTO FINANCE  
12-27-22 [[33](#)]

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkts. 37 & 38. It is noted that the proof of service does not conform to the local rule 7005-1.

**The Motion to Value is ~~xxxxxx~~.**

The debtor filed this Motion seeking to value the portion of Capital One Auto Finance's ("Creditor") claim secured by the debtor's property commonly known as 2016 Nissan Altima Sedan (the "Property").

The debtor has declared her opinion of the replacement value of the Property at the time of filing was \$11,200. Declaration, Dckt. 35.

The creditor's filed proof of claim (Claim No. 5-1) values the secured claim amount at \$11,634.00.

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on March, 2017, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Matter must be set for evidentiary hearing.

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 Value Collateral and Secured Claim filed by the 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 pursuant to 11 U.S.C. § 506(a) is ~~xxxxxxxxxx~~