

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 12, 2021 at 1:30 p.m.

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

1.	19-27700 -C-13	KRISTA/SEAN BILLINGS	MOTION TO CONFIRM PLAN
	PLC -5	Peter Cianchetta	11-13-20 [90]

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 60 days' notice was provided. Dckt. 94.

<p>The Motion to Confirm is denied.</p>
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The debtors filed this Motion seeking to confirm the Fourth Amended Chapter 13 Plan (Dckt. 93) filed on November 13, 2020.

The trustee filed an Opposition on December 8, 2020. Dkt. 97. The trustee argues that the plan mathematically requires average payments of \$4,708.77 a month through November 9, 2020, when accounting for trustee compensation. The plan provides for \$47,685.16 paid through November 9, 2020, which only amounts to \$4,335.01 a month.

If the plan does not have adequate funding to cover the secured and administrative claims, the plan is not likely feasible. 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 debtors, Krista Jean Billings and Sean Ryan Billings, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

January 12, 2021 at 1:30 p.m.

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

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 77.

The Motion to Modify is XXXXXXXXXX

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 76) filed on December 7, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition on December 10, 2020. Dkt. 78. The trustee opposes confirmation on the following grounds:

1. The debtor is \$731.00 delinquent under the proposed plan.
2. Debtor's plan fails to account for post-petition arrears of \$37,218.74 accruing due to a mortgage forbearance, and also fails to specify how the forbearance arrears will be paid at the end of the forbearance period.
3. The plan provides for the Class 2 claims of the County of Sacramento and Sunstreet Energy, but no proof of claim has been filed for either claim as is required by Section 3.01 of the plan.

DEBTOR'S REPLY

The debtor filed a Reply on January 5, 2021. Dkt. 81. The debtor asserts the following in reply:

1. The debtor submitted her payment of \$731 for November late - it posted on 12/21/2020. However, the debtor had to cancel the payment scheduled for 01/01/2021 due to unemployment not coming in as anticipated.
2. The debtor will account for the post-petition mortgage arrears through a loan modification and modified plan.
3. The County of Sacramento's claim is accounted for through LoanCare's Class 1 claim.
4. Debtor's counsel filed an Amended Proof of Claim on behalf of Sunstreet Energy on December 29, 2020.

DISCUSSION

The primary question for confirmation is whether the plan is feasible.

At the hearing, the parties addressed plan feasibility
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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, Karla Antonette Souza Gama, 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 xxxxxxxxxxx

3. [20-24912](#)-C-13 JAVIER CASTELLANOS AND OBJECTION TO CONFIRMATION OF
[KMM](#)-1 ALEJANDRA ALCANTAR PLAN BY U.S. BANK NATIONAL
Richard Jare ASSOCIATION
11-20-20 [[32](#)]

Thru #4

No 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 53 days' notice was provided. Dckt. 35.

The Objection to Confirmation of Plan is XXXXXXX

Creditor U.S. Bank National Association ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor's plan provides for Creditor's claim as a Class 4 claim that is not in default. However, there is a \$13,915.98 prepetition arrearage.
2. When accounting for the prepetition arrearages, the debtors do not have sufficient income to fund the plan.

DISCUSSION

The debtor has missclassified Creditor's claim as a Class 4. While the plan provides that the proof of claim controls classification and claim amount, the Creditor has pointed out that the debtors do not appear to have sufficient funds to make increased payments necessary when accounting for prepetition arrearages.

At the hearing, XXXXXXXXXXXXXXXXXX

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association, 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 XXXXXXX

4. [20-24912](#)-C-13 JAVIER CASTELLANOS AND OBJECTION TO CONFIRMATION OF
[RDG](#)-1 ALEJANDRA ALCANTAR PLAN BY RUSSELL D. GREER
Richard Jare 12-10-20 [[45](#)]

No 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 days' notice was provided. Dckt. 48.

The Objection to Confirmation of Plan is XXXXXX

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

1. The debtors' Schedule B lists debtors' interest in the business AAA Cleaning Service. The debtors have failed to provide 2 years of corporate tax returns, a year to date Profit and Loss statement, proof of license and insurance or written statements that no such documentation exists.
2. The plan proposes valuing the secured claim of American Honda Finance, and is not feasible until a motion valuing that claim is granted.
3. The debtors' plan provides for Class 2 creditors to receive increased dividends "no later than month 15" and "no later than month 26" without specifying what those months are.
4. Debtors' Petition fails to include debtor's business at Part 1 & 3. Debtor's Schedule I does not identify the address or business name for joint debtor at number 1.
5. Debtors' Form 122C-1 has not been prepared correctly. In line 5 Debtors have deducted ordinary and necessary business expenses from gross receipts.

DISCUSSION

A review of the docket shows the court has granted the debtotr's Motion (Dkt. 37) seeking to value the secured claim of American Honda Finance.

However, the debtor's have not provided 2 years of corporate tax returns, a year to date Profit and Loss statement, proof of license and insurance or written statements that no such documentation exists for the debtors' business. Those documents are required. 11 U.S.C. § 521(e)(2)(A).

The debtors have also prepared their Form 122C-1 incorrectly by deducting business expenses; incorrectly indicate they do not have a business at questions 4 and 12 on the Petition; and have not clearly specified in the plan when increased dividends to Class 2 creditors

commence.

At the hearing, **xxxxxxxxxxxxxxxx**

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

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

The Objection to the Chapter 13 Plan filed by 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 **xxxxxx**

5. [20-24912](#)-C-13 JAVIER CASTELLANOS AND MOTION TO VALUE COLLATERAL OF
RJ-3 ALEJANDRA ALCANTAR AMERICAN HONDA FINANCE
Richard Jare CORPORATION
12-1-20 [[37](#)]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 40.

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 Value is granted.

The debtor filed this Motion seeking to value the portion of American Honda Finance Corporation's ("Creditor") claim secured by the debtor's property commonly known as a 2018 Honda Accord (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$18,500.00. Declaration, Dckt. 39.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on January 6, 2018 which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Upon review of the record, the court finds the value of the Property is \$18,500.00. Therefore, Creditor's secured claim is determined to be \$18,500.00. 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 American Honda Finance

Corporation ("Creditor") secured by property commonly known as a 2018 Honda Accord (the "Property") is determined to be a secured claim in the amount of \$18,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

6. [20-24313](#)-C-13 JOE GARCIA MOTION FOR RELIEF FROM AUTOMATIC
[JHK](#)-1 Thomas Amberg STAY
12-9-20 [[35](#)]
AMERICREDIT FINANCIAL
SERVICES, INC. VS.

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dckt. 41.

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

The Motion for Relief from the Automatic Stay is granted.

Americredit Financial Services, Inc. dba GM Financial ("Movant") filed this Motion seeking relief from the automatic stay as to insurance proceeds stemming from the total loss of the debtor's 2017 Chevrolet Silverado (the "Property"). Movant intends to apply the insurance proceeds to its claim, totaling \$30,467.31, and to remit the remainder to the trustee.

On December 9, 2020, the debtor filed a non-opposition. Dkt. 42.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the vehicle securing Movant's claim was totaled and only insurance proceeds remain.

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 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Americredit Financial Services, Inc. dba GM Financial ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, to apply insurance proceeds from the total loss of the debtor's 2017 Chevrolet Silverado Movant's claim.

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

No other or additional relief is granted.

7. [17-20214](#)-C-13 CHRISTOPHER/MARTA HEARTY MOTION FOR COMPENSATION FOR
[MRL](#)-2 Mikalah Liviakis MIKALAH RAYMOND LIVIAKIS,
DEBTORS ATTORNEY(S)
11-29-20 [[59](#)]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 43 days' notice was provided. Dckt. 63.

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

The Motion for Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Christopher John Hearty and Marta Xiomara Hearty, the Chapter 13 Debtors ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests fees in the amount of \$1,540.

FEES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Administration: Applicant spent 4.5 hours in this category. Services includes calculating options for debtors to complete the chapter 13 plan, maintaining ownership of home, discussing future earnings and employment, updating schedules to reflect current economic circumstances.

Fee Applications: Applicant spent 1.5 hours in this category. Services include one application for compensation.

Modified Plan: Applicant spent 2.4 hours in this category. Services include drafting a new plan, and a motion to modify plan, and responding to the Trustee's issues on the plan.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mikalah Raymond Liviakis	8.4	\$385.00	\$3,234.00
Total Fees for Period of Application			\$3,234.00

FEES ALLOWED

The unique facts surrounding the case, including preparation and prosecution of a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,540.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mikalah Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah Raymond Liviakis, Professional Employed by Christopher John Hearty and Marta Xiomara Hearty ("Debtor")

Fees in the amount of \$1,540.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 85.

The Motion to Modify Plan is denied.

The debtors filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 81) filed on December 4, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 87) on December 17, 2020, opposing confirmation on the following grounds:

1. The Additional Provisions of Debtors' plan (DN 81) provides that the debtors are obtaining a forbearance due to COVID 19, but no Notice of Forbearance has been filed to date.
2. The plan mathematically requires higher plan payments December 2020 through May 2021 due to the Notice of Forbearance not being filed, and June 2021 through September 2021 when accounting for trustee compensation.
3. The debtors' plan attempts to provide for a plan term of 92 months which exceeds the allowable plan term of 7 years (84 months) under 11 U.S.C. §1329(d)(2).

CREDITOR'S OPPOSITION

Creditor Guild Mortgage Company ("Creditor") filed an Opposition (Dkt. 90) on December 29, 2020, opposing confirmation on the following grounds:

1. The plan does not provide for postpetition arrearages due totaling \$16,962.24.
2. The debtors do not have sufficient funds to make increased payments after accounting for the postpetition arrearages.
3. Under 11 U.S.C. § 1326(a)(1), the debtors shall commence making the payments proposed by the Plan within 30 days after the Petition is filed.

DEBTOR'S REPLY

The debtors filed a Reply on January 5, 2021 (Dkt. 93) asserting that a COVID-19 forbearance has been received; that debtor Luis Garcia has received new employment to replace lost income from the debtors' business; and that the debtors will now be able to increase payments to \$2,247 a month beginning June 2021.

DISCUSSION

The plan by its terms runs for 92 months, which exceeds the maximum term. While both the trustee and Creditor noted this point, the debtors do not address the issue in their Reply.

Furthermore, the debtors' Reply and supporting exhibit show a forbearance for December 2020, January 2021, and February 2021. Dkt. 95. The Creditor's Opposition shows that payments for July through November 2020 were not subject to forbearance. Dkt. 91. Without accounting for those payments, it is unclear how the plan is feasible.

Both of the foregoing are grounds to deny confirmation. 11 U.S.C. §§ 1325(a)(6) and 1329(d)(2).

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

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

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. Dckt. 38.

The Motion to Authorize Trial Loan Modification is ~~xxxxxx~~.

The movant U.S. Bank NA, as successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage PassThrough Certificates, Series 2007-HY1 ("Movant"), filed this Motion seeking authorization for the debtor to enter into a trial loan modification agreement affecting debtor's real property commonly known as 1460 Shirley Drive, Sacramento, CA.

The trial modification plan provides that if the Debtor makes three payments in the amount of \$2,106.75 on October 1, 2020, November 1, 2020, and December 1, 2020, then Movant will propose a permanent loan modification to Debtor.

Movant explains the Motion is essentially seeking a "comfort order" providing that the automatic stay provisions of 11 U.S.C. § 362 are not violated by this trial modification.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition on December 22, 2020. Dkt. 43. The trustee opposes the Motion because (1) the Motion was brought by a creditor and not joined by the debtor; (2) no plan has been confirmed; (3) it is unclear what relief the Movant is seeking; and (4) the exhibit shows the Modification period was October through December of 2020, meaning the period has already lapsed.

DISCUSSION

From the Motion, it is not clear what legal basis the Movant has and what specific relief is sought. The Motion is postured as a Motion requesting authorization for the debtor to incur new debt, but the Movant also notes that Movant is merely trying not to run afoul of the automatic stay provisions of 11 U.S.C. § 362.

At the hearing, Movant explained ~~xxxxxxxxxxxxxxxx~~

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

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

The Motion to Authorize Trial Loan Modification filed by the U.S. Bank NA, as successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage PassThrough Certificates, Series 2007-HY1 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 ~~xxxxxx~~

Final Ruling: No appearance at the January 12, 2021 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 41 days' notice was provided. Dkt. 63.

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

The hearing on the Motion is continued to March 9, 2021 at 1:30 p.m.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 50) filed on September 25, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 64) on December 22, 2020, opposing confirmation on the following grounds:

1. Debtor has admitted that the Westlake Parkway address is not where she lives and that the address listed as her business address is her residence.
2. The trustee objects to the attorney's fees requested in the Chapter 13 Plan as they are contradictory to the fees represented in the Rights & Responsibilities filed in this case. The plan seeks \$6,000 in fees where the Rights & Responsibilities represents fees to be \$4,000.
3. The Internal Revenue Service has filed a priority claim in the amount of \$6,408.35 (Claim 3-1) and the Franchise Tax Board has filed a priority claim in the amount of \$2,281.99. Debtor's plan does not provide for these priority claims.

DEBTOR'S REPLY

The debtor filed a Reply on January 5, 2021. Dkt. 69. The debtor represents that the issues with the debtor's address and Rights and Responsibilities have been corrected. The debtor argues further that the priority tax debt is around \$5,000, which may need to be established through an objection to claim.

The debtor requests a 60 day continuance to allow the issues to be resolved.

DISCUSSION

In light of the debtor's request, the court shall continue the hearing to March 9, 2021 at 1:30 p.m.

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, Elsie Supnet Liberato, 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 hearing on the Motion is continued to March 9, 2021 at 1:30 p.m.

11. [20-25121](#)-C-13 DELORES GREY
Richard Jare

OBJECTION TO CONFIRMATION OF
PLAN BY REGIONAL ACCEPTANCE
CORPORATION
12-28-20 [[29](#)]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 33.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Objection to Confirmation of Plan is continued to January 26, 2021 at 1:30 p.m.

The Clerk of the court filed a Memo (Dkt. 34) indicating this Objection would not be calendared unless Amended Notice was filed correcting errors and setting a January 26, 2021 hearing date.

The Movant filed an Amended Notice January 6, 2021. Dkt. 36.

In light of the amended notice, the court shall continue the 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 Objection to the Chapter 13 Plan filed by Regional Acceptance Corporation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to January 26, 2021 at 1:30 p.m.

12. [20-22025](#)-C-13 BRETT/SUSAN HUTCHENS
[DNL](#)-2 Scott Shumaker

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
12-15-20 [[75](#)]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 80.

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

The Motion for Allowance of Professional Fees is granted.

DESMOND, NOLAN, LIVAICH & CUNNINGHAM, the Attorney ("Applicant") for Sheri Carello, the former Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 15, 2020, through, December 9, 2020. The order of the court approving employment of Applicant was entered on July 19, 2020. Applicant requests fees in the amount of \$7,500.00.

FEES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Asset Investigation and Analysis: Applicant spent 8.9 hours in this category.

Asset Disposition/Settlement: Applicant spent 4.3 hours in this category.

Fee/Employment Applications: Applicant spent 3.5 hours in this category.

Case Administration/Conversion: Applicant spent 1.9 hours in this category.

Exemption Analysis: Applicant spent 1.0 hours in this category.

The fees requested are computed by Applicant by multiplying a blended billing rate of \$382.65 by the 19.6 billable hours.

FEES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$7,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

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

The Motion for Allowance of Fees and Expenses filed by DESMOND, NOLAN, LIVAICH & CUNNINGHAM ("Applicant"), Attorney for Sheri Carello, the former Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional employed by Client,

Fees in the amount of \$7,500.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the former Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

13. [20-22025](#)-C-13 BRETT/SUSAN HUTCHENS
[SLC](#)-1 Scott Shumaker

MOTION FOR COMPENSATION FOR
SHERI L. CARELLO, CHAPTER 7
TRUSTEE(S)
12-16-20 [[82](#)]

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 27 days' notice was provided. Dckt. 86.

The Motion for Allowance of Professional Fees is granted.

Sheri Carello, the former Chapter 7 Trustee, ("Applicant") for the Estate of Brett Wood Hutchens and Susan Evette Hutchens ("Client"), makes a Request for the Allowance of Fees in this case. Fees of \$4,000.00 are requested for the period April 17, 2020, through December 16, 2020.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 2.05 hours in this category.

Asset Investigation: Applicant spent 12.05 hours in this category.

Applicant's fees are computed by multiplying the 14.1 billable hours by the Applicant's billing rate of \$325.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 trustee filed a Response on December 22, 2020. Dkt. 89. The Chapter 13 trustee notes that 11 U.S.C. § 1326(b)(3)(B)(ii) provides a mathematical formula to pay Chapter 7 trustee fees.

DISCUSSION

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$4,000.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 13 Trustee in a manner consistent with 11 U.S.C. § 1326(b)(3)(B)(ii) and the Bankruptcy Code.

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

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

The Motion for Allowance of Fees and Expenses filed by Sheri Carello, the former Chapter 7 Trustee, ("Applicant")

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

IT IS ORDERED that Sheri Carello is allowed the following fees and expenses as a professional of the Estate:

Sheri Carello, the Chapter 7 Trustee

Fees in the amount of \$4,000.00,

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with 11 U.S.C. § 1326(b)(3)(B)(ii) and the Bankruptcy Code.

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 42 days' notice was provided. Dckt. 41.

The Motion to Sell is granted.

The debtor Dee Ann Haugen filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 8953 Bedford Ave, Fair Oaks, CA ("Property").

The proposed purchaser of the Property is Jordon Olsen and Kayla Olsen, and the purchase price is \$400,000.00. The Motion also request approval of a 5% broker's fee and for waiver of the Federal Rule of Bankruptcy Procedure 6004(h) 14-day stay.

TRUSTEE'S NON-OPPOSITION

The trustee filed an Opposition (Dkt. 42), but thereafter filed a withdrawal of that opposition. Dkt. 49.

CREDITOR'S NON-OPPOSITION

Creditor JPMorgan Chase Bank, National Association ("Creditor") filed a Response (Dkt. 47) on December 29, 2020 indicating non-opposition and requesting the following language be added to the order granting the Motion:

1. Creditor's Claim shall be paid off in full through escrow;
2. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's Claim is paid in full at the time the sale of the Property is finalized.

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. Therefore, the Motion is granted.

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

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

The Motion to Sell Property filed by the debtor Dee Ann Haugen ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jordon Olsen and Kayla Olsen or nominee, the Property commonly known as 8953 Bedford Ave, Fair Oaks, CA ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$400,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 40, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. 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.

15. [20-23836](#)-C-13 CHARLES/KATHY JONES
[RDG](#)-1 Candace Brooks

OBJECTION TO CLAIM OF DISCOVER
BANK, CLAIM NUMBER 26
12-3-20 [[22](#)]

Thru #16

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 40 days' notice was provided. Dckt. 24.

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. 26, filed by Discover Bank was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is October 14, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed October 15, 2020.

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 26 of Discover Bank is sustained, and the claim is disallowed in its entirety.

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 40 days' notice was provided. Dckt. 27.

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. 27, filed by Discover Bank was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is October 14, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed October 15, 2020.

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 27 of Discover Bank is sustained, and the claim is disallowed in its entirety.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 50 days' notice was provided. Dckt. 86.

The Motion to Modify is XXXXXX

The debtor filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 85) filed on September 28, 2020.

Creditor U.S. BANK, N.A., as trustee, filed an Opposition on October 16, 2020. Dkt. 93. The creditor notes that all plan payments are suspended through July 2020, and that no payments on its secured claim are proposed until August 2021. Creditor objects that the plan does not provide for equal monthly payments as required by 11 U.S.C. § 1325(a)(5); was not filed in good faith as required by 11 U.S.C. § 1325(a)(3); impermissibly modifies its claim in violation of as required by 11 U.S.C. § 1322(b)(2); and has not been demonstrated to be feasible as required by 11 U.S.C. § 1325(a)(6).

The debtor filed a Reply on October 27, 2020. Dkt. 95. The Reply argues that the debtor can fund his plan and increased payments without a refinance; that the debtor is making equal payments, which increase alongside disposable income increases; and that the plan has been filed in good faith.

DISCUSSION

At the prior hearing, the parties agreed to a continuance for the creditor to determine which postpetition payments have been made and to allow the debtor to demonstrate whether the plan is feasible.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Motion to Modify Plan 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 xxxxxxxxxxxxxxxx

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 60 days' notice was provided. Dckt. 30.

The Motion to Confirm is ~~XXXXXXXXXX~~

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dckt. 29) filed on November 13, 2020.

The trustee filed an Opposition (Dkt. 33) on December 17, 202, opposing confirmation on the following grounds:

1. CarMax has filed a secured claim in the amount of \$26,484.66 for a 2017 Jaguar XE (Claim 1-1). Debtor's plan does not provide for this secured claim.
2. Debtor's Plan at Section 3.08 provides:

Class 2 creditor Onemain shall be paid the missed payments each time enough money in excess of the monthly disbursements accumulates to equal one missed payment.

This is contradictory to Section 5.02 of the plan. In the event that Debtor's motion is granted, Trustee requests language in the order confirming plan to provide for OneMain Financial in the amount of \$11,400.00 to be paid at 4.25% interest a monthly dividend of \$224.78 commencing December 2020.

3. Debtor's 2019 Federal Income Tax Returns includes a Profit and Loss from Business as a Taxi Service. Debtor has not included her business income on her budget, or information on the Statement of Financial Affairs filed at the inception of the case. The trustee has raised this same opposition in the trustee's Objection to Confirmation (DN 13) which was sustained on October 6, 2020.

DISCUSSION

The trustee has recommended language to be added through the order confirming plan to address the claim of Onemain Financial.

The debtor has not yet addressed whether the plan is feasible in light of CarMax's \$26,484.66 secured claim, and why the debtor has still not included business income in her budget (which was cause to sustain the trustee's objection to the prior proposed plan).

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

The Motion to Confirm filed by the debtors, Roselyn Asha Shankar, 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~~

19. [20-23749](#)-C-13 SCOTT DAVIS AND TRACY OBJECTION TO CONFIRMATION OF
[DPC](#)-1 TANNER PLAN BY DAVID P. CUSICK
Candace Brooks 12-29-20 [[43](#)]

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Objection 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. Dckt. 46.

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

The hearing on the Objection to Confirmation of Plan is continued to February 23, 2021 at 1:30 p.m.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the First Meeting of Creditors has yet to be held due to the case being recently converted and initial Chapter 13 trustee resigning on December 1, 2020.

DISCUSSION

The court shall continue the hearing on the Objection to February 23, 2021 at 1:30 p.m. to allow the debtor to attend the Meeting of Creditors.

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, David Cusick, 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 hearing on the Objection to Confirmation of Plan is continued to February 23, 2021 at 1:30 p.m.

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

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
12-1-20 [[115](#)]

U.S. BANK, NATIONAL
ASSOCIATION VS.

Thru #22

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. Dckt. 120.

The Motion for Relief from the Automatic Stay is granted.

U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 7995 Alta Vista Lane, Citrus Heights, CA (the "Property").

Movant first argues there is no stay in effect as to the debtor or estate pursuant to 11 U.S.C. § 362(c)(3) because this is debtor's second case filed recently, with the most recent case dismissed the in year preceding filing this case.

Movant also argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor has not paid the October through and including December 2020 post-petition mortgage payments to Movant. Declaration, Dckt. 21. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(4) because the debtor has filed multiple bankruptcies as part of a scheme to hinder, delay, and defraud the Movant.

DISCUSSION

Movant first argues that there is no stay in effect pursuant to 11 U.S.C. § 362(c)(3). However, no legal authority is provided for the proposition that the stay was terminated as to the estate-the plain language of the statute shows stay is terminated only as to the debtor. In re Thu Thi Dao, 616 B.R. 103 (Bankr. E.D. Cal. 2020).

While there is a stay in effect, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent postpetition payments.

The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(4) because the debtor has filed multiple bankruptcies as part of a scheme to hinder, delay, and defraud the Movant. Before filing this case, the debtor filed 5 other cases in this district. The two cases, Nos. 11-22709 and 19-27237, filed under Chapter 7 received a discharge. Notwithstanding having the relief of a Chapter 7 discharge, the debtor filed new cases under Chapter

13 shortly thereafter in both instances. Each of the debtor's prior 3 Chapter 13 cases have been dismissed, and at least in part for failure to maintain plan payments. While the debtor is now pro se, in prior cases he had counsel, and is knowledgeable on the requirements of a debtor under the Bankruptcy Code.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief because the case was filed in bad faith for the sole intent to cause delay.

The court finds Movant has not 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 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

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

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

No other or additional relief is granted.

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 34 days' notice was provided. Dckt. 91.

The Motion to Confirm is XXXXXX

The debtor filed this Motion seeking to confirm an Amended Chapter 13 Plan (Dckt. 90) filed on October 14, 2020.

The trustee filed an Opposition, and Supplemental Opposition (Dkts. 99, 103), opposing confirmation on the following grounds:

1. Debtor testified at his 341 meeting of creditors that he has not filed his 2019 Federal and State income tax returns.
2. The Trustee has filed an objection to the debtor's exemption of \$175,000.00 in his residence. Without the tax returns, the Trustee cannot complete his analysis regarding the debtor's income and whether the debtor is entitled to an exemption of \$175,000.00 pursuant to C.C.P. §704.730(a)(3)(C).
3. Debtor admitted that he is owed child support arrears in an amount over \$50,000.00. Debtor has failed to include the child support arrears due to him in his schedules.
4. The Non- Standard Provisions of Debtor's plan at 7.2 states that Debtor shall pay off his plan when he receives his Social Security Settlement which he expects to receive by July 2021. Debtor has testified that he applied for Social Security Disability 2 years ago and that the process has been stalled due to the Covid pandemic, and that the July 2021 date was based on information received from a prior attorney in his case.

DISCUSSION

At the prior hearing, the debtor represented that his accountant would finish preparing his tax returns within 2-3 days, and that he had recently retained counsel to pursue his Social Security disability claims.

At the hearing, the parties reported xxxxxxxxxxxxxxxx

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

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

The Motion to Confirm filed by the debtor, Derek Leroy Wolf, 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 **xxxxxxxxxxxxxxxx**

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 36 days' notice was provided. Dckt. 109.

The Objection to Claimed Exemptions is XXXXXX

The Chapter 13 Trustee filed this Objection to the debtor's \$175,000 homestead exemption claimed pursuant to California Civil Code § 704.730 on the basis that the trustee does not know if the debtor qualifies.

That provision allows a homestead exemption of \$175,000 for (A) persons 65 or older; (B) a person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment; and (C) a person 55 years of age or older with a gross annual income of not more than \$25,000 or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than \$35,000 and the sale is an involuntary sale.

Here, it is known the debtor is 59 years old. Unknown is whether the debtor qualifies based on some physical or mental disability, or based on income.

The trustee notes in the Objection that he has requested evidence from the debtor, including a 2019 tax return and anything demonstrating disability, but that nothing has been provided to date.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to Claimed Exemptions filed by the Chapter 13 Trustee 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 XXXXXX

23. [20-24953](#)-C-13 DONALD MACON
[JHK](#)-1 Steele Lanphier

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
11-23-20 [[17](#)]

CREDIT ACCEPTANCE
CORPORATION VS.

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 50 days' notice was provided. Dckt. 24.

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

The Motion for Relief from the Automatic Stay is granted.

Credit Acceptance Corporation ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor 2012 Volvo XC90 (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 4 payments, and because the proposed plan provides for the surrender of the Property. Declaration, Dckt. 20.

Movant also seeks relief from the co-debtor stay of 11 U.S.C. § 1301 on the basis that Movant would be irreparably harmed by the continuation of the codebtor stay since Movant is not being compensated for continued possession of the Property by the debtor and codebtor. Movant also seeks relief from the 4001 14-day stay since the plan provides for the vehicle to be surrendered.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent payments and the plan provides for the surrender of the Property.

Movant has also established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted.

Additionally, Movant has pleaded adequate facts to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Volvo XC90 ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Brittany Stratton of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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

No other or additional relief is granted.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 26 days' notice was provided. Dckt. 31.

The Objection to Confirmation of Plan is sustained.
--

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

1. The debtor testified at the First Meeting of Creditors held on December 17, 2020, that no federal tax returns for 2019 have been filed. The Meeting has been continued to allow the debtor to file those returns.
2. The debtor has not provided the trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent prepetition tax filing year.
3. The debtor has not provided copies of his recent pay advices.
4. Creditor Golden 1 Credit Union has filed a secured claim for \$58,555.58. Debtor's plan does not provide for this secured claim.
5. Even omitting Golden 1 Credit Union's claim, the trustee calculates the plan mathematical requires a payment of \$3,801.00, which is more than the proposed \$2,750 payment.
6. The plan proposes valuing three secured claims, and is not feasible until the court has entered an order valuing those claims.
7. Sections 3.05 and 3.06 of Debtor's plan provides for the balance of attorney fees of \$4,000.00 to be paid at \$200.00 per month. Section 7.01 of Debtor's plan states that attorney fees are to be paid in full prior to distribution to Class 1 arrears. Accordingly, payments to the Class 1 arrearage claim of Select Portfolio Servicing Inc. will commence in month 21. Given the amount of prepetition arrearages, it would take 73 months to pay that claim.

DISCUSSION

The debtor has yet to file his 2019 tax returns. Filing of the return and providing it to the trustee is required. 11 U.S.C. §§ 521(e)(2)(A)(i), 1308, 1325(a)(9). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Additionally, the debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 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 also not shown the plan to be feasible. The plan payment is less than mathematically required by the plan terms; the plan does not address Golden 1 Credit Union's claim; the plan terms provide for payment of Select Portfolio Servicing Inc after attorney fees, which will result in a 73 month plan term; and the plan relies on valuing secured claims that have yet to be valued by the court. That is an additional reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by 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.

Thru #26

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 27.

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 Value is granted.

The debtor filed this Motion seeking to value the portion of AG3 Revocable Trust's ("Creditor") claim secured by the debtor's property commonly known as 9845 Alta Mesa Rd. Wilton, CA (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$622,200.00. Declaration, Dckt. 26. The Property is encumbered by a first Deed of Trust held by Select Portfolio Servicing, Inc. in the amount of \$700,742.88. Creditor holds a junior lien in the amount of \$132,572.80.

DISCUSSION

Upon review of the record, the court finds the value of the Property is \$622,200.00. There are \$700,742.88 of senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$0. 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 AG3 Revocable Trust ("Creditor") secured by property commonly known as 9845 Alta Mesa Rd. Wilton, CA (the "Property") is determined to be a

secured claim in the amount of \$0, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

No 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 36 days' notice was provided. Dckt. 22.

The Objection to Confirmation of Plan is XXXXXX

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

1. The plan proposes valuing the secured claim of FCI Lending Servicing, Inc., but no motion has been filed to value that claim.
2. Debtor's plan provides for total priority claims in the amount of \$1,061.00. On November 25, 2020 the Internal Revenue Service filed an amended claim listing Priority Claims in the amount of \$8,618.75.
3. The Franchise Tax Board has filed a proof of claim in the secured amounts of \$4,486.71. The debtor has failed to identify this claim in the plan or on Schedule D.

DISCUSSION

A review of the docket shows the court has granted the debtor's Motion (Dkt. 23) valuing the secured claim of AG3 Revocable Trust (FCI Lending Servicing, Inc.).

However, the debtor still has to address the higher than anticipated priority and secured tax claims to show the plan to be feasible.

At the hearing, XXXXXXXXXXXXXXXX

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

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

The Objection to the Chapter 13 Plan filed by 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 XXXXXX

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 15 days' notice was provided. Dckt. 15.

The Motion to Extend the Automatic Stay is granted.

Dolores Patricia Lynn Burnett ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on July 17, 2020, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 19-25748, Dckt. 60. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of miscommunications with prior counsel, and the mistaken belief that curing the payment delinquency would resolve the trustee's dismissal motion without having to oppose the motion. Dkt. 14. Debtor now reports having greater income than in the prior case.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811,

815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Dolores Patricia Lynn Burnett having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

28. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA
[PPR](#)-1 MARTINEZ-MACIEL
Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CHAMPION MORTGAGE COMPANY
(NATIONSTAR MORTGAGE LLC, DBA)
10-9-20 [[24](#)]

Thru #29

No 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 29 days' notice was provided. Dckt. 29.

The Objection to Confirmation of Plan is XXXXXX

Creditor Champion Mortgage Company ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that its claim is missclassified as a Class 2, where it should be Class 1.

DEBTOR'S REPLY

The debtors filed a Reply on November 10, 2020, consenting to reclassifying Creditor's claim to Class 1 via the order confirming the plan. Dckt. 37.

DISCUSSION

The parties are in agreement that the Creditor's claim should be treated as a Class 1.

At the prior hearing the parties agreed to a continuance to resolve the grounds for Objection.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to the Chapter 13 Plan filed by Champion Mortgage Company, 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 xxxxxxxx

29. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA CONTINUED OBJECTION TO
[RDG](#)-1 MARTINEZ-MACIEL CONFIRMATION OF PLAN BY RUSSELL
Peter Macaluso D. GREER
10-26-20 [[30](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 33.

The Objection to Confirmation of Plan is XXXXXX

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

1. The debtors' non-exempt equity totals \$68,524.63 and non-priority general unsecured claims total \$28,540.08. Accordingly, Debtors' plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of .13%

2. Debtors' plan provides for Gregory Funding as a Class 1 creditor with a postpetition mortgage payment of \$1,213.83 per month. Gregory Funding has filed a proof of claim indicating a monthly post-petition mortgage payment of \$1,468.05, meaning the debtors' plan is not feasible.

3. Debtors' plan provides for Sacramento County Tax Collector as a Class 2 claim in the amount of \$28.11 to be paid at 18% interest a monthly dividend of \$15.00. The County of Sacramento has filed a proof of claim listing a secured portion of \$1,823.32, meaning the debtors' plan is not feasible.

DISCUSSION

At the prior hearing the parties agreed to a continuance to resolve the grounds for Objection.

At the hearing, XXXXXXXXXXXXXXXXXX

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

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

The Objection to the Chapter 13 Plan filed by 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 XXXXXXXX

30. [20-20473](#)-C-13 VIKASH/SANJANI SINGH
[FF-3](#) Gary Fraley

MOTION TO APPROVE LOAN
MODIFICATION
12-1-20 [[95](#)]

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 42 days' notice was provided. Dckt. 99.

The Motion to Authorize Trial Loan Modification is xxxxxx

The debtors Vikash Singh and Sanjani Singh filed this Motion seeking authority to make trial loan modification payments for the purpose of qualifying a modification of the debtor's mortgage. The trial payments are \$2,693.43 for three months. Dkt. 97.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition on December 22, 2020. Dkt. 100. The trustee notes that the debtors are delinquent with plan payments in the amount of \$11,976.00. The balance of funds on hand in Debtors' case is \$1,036.27, meaning there are insufficient funds to make the payment of \$2,693.43 in December 2020.

The trustee requests clarification as to whether the trial payments are proposed to be paid directly.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Motion to Authorize Trial Loan Modification filed by the debtors Vikash Singh and Sanjani Singh 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 xxxxxx

Final Ruling: No appearance at the January 12, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 15 days' notice was provided. Dckt. 56.

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

The Motion for Allowance of Professional Fees is granted.

Geoffrey Richards, the former Chapter 7 Trustee, ("Applicant") for the Estate of Esther Vasquez ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees of \$1,924.00 are requested for the period August 18, 2020 through December 1, 2020.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 7.4 hours in this category.

Applicant's fees are computed by multiplying the 7.4 billable hours by the Applicant's billing rate of \$260.00.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,924.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 13 Trustee in a manner consistent with 11 U.S.C. § 1326(b)(3)(B)(ii) and the Bankruptcy Code.

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

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

The Motion for Allowance of Fees and Expenses filed by Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards is allowed the following fees and expenses as a professional of the Estate:

Geoffrey Richards, the former Chapter 7 Trustee

Fees in the amount of \$1,924.00,

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with 11 U.S.C. § 1326(b)(3)(B)(ii) and the Bankruptcy Code.