

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

**January 25, 2022 at 1:30 p.m.**

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1.	<a href="#">16-24004</a> -C-13	JENNIFER/VINCENT HAMMOND	MOTION FOR COURT CONSENT TO
	<a href="#">AP-1</a>	Linda Does	ENTER INTO PAYMENT DEFERRAL
			AGREEMENT
			12-22-21 [ <a href="#">65</a> ]

**Final Ruling:** No appearance at the January 25, 2022 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 34 days' notice was provided. Dkt. 68.

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).

<p><b>The Motion is granted.</b></p>
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Rocket Mortgage, LLC f/k/a QuickenLoans, LLC f/k/a QuickenLoans Inc. ("Movant") filed this Motion seeking an order authorizing the debtors to enter into a loan modification.

The specific modification is a Voluntary Payment Deferral Agreement, which will defer 5 payments (August 2021 through December 2021) totaling \$6,465.78.

Under the confirmed plan, which has now been completed, the debtor was paying Movant's secured claim as a Class 4 - with direct payments outside the plan. Dkt. 5.

The trustee filed a Final Report and Account on October 26, 2021. Dkt. 57. Discharge was entered on December 27, 2021. Dkt. 69.

**DISCUSSION**

The court finds that the proposed agreement, 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.

**January 25, 2022 at 1:30 p.m.**

**Page 1 of 15**

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

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

The Motion to Incur Debt filed by Rocket Mortgage, LLC f/k/a QuickenLoans, LLC f/k/a QuickenLoans Inc. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted. The Movant's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee and the debtor's counsel for approval as to form, and if so approved submit the proposed order to the court.

WESTLAKE SERVICES, LLC VS.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 41.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest. *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 denied.**

WESTLAKE SERVICES, LLC, D/B/A WESTLAKE FINANCIAL SERVICES ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2019 Ford Fusion (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 5 postpetition payments, and there is no equity cushion to protect Movant's interest in the Property.

Two declarations were filed in support of the Motion. Dkts. 44 & 45. However, neither is signed or dated.

**DISCUSSION**

While no admissible evidence has been proffered to show a payment delinquency, the point is moot.

As stated by Movant, its claim is a Class 4 under the confirmed Chapter 13 Plan. Dkts. 4 & 36. The Plan provides the following with respect to secured claims and the automatic stay:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Dkt. 4 (emphasis added).

Based on the plain language above, the automatic stay was already modified to allow Movant to enforce its rights with respect to the Property. Therefore, the relief requested by the Motion is moot and the Motion shall be denied.

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

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

The Motion for Relief from the Automatic Stay filed by WESTLAKE SERVICES, LLC, D/B/A WESTLAKE FINANCIAL SERVICES ("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 denied. Relief from the automatic stay of 11 U.S.C. § 362 is a moot issue because the stay was already modified upon plan confirmation to allow Movant to exercise its rights against its collateral and any nondebtor in the event of a default.

3. [21-20838](#)-C-13 RON COLLA  
Peter Macaluso

CONTINUED EVIDENTIARY HEARING  
RE: MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-26-21 [[72](#)]

ROCKY TOP RENTALS, LLC VS.

Thru #5

**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 33 days' notice was provided. Dkt. 78.

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

Creditor Rocky Top Rentals, LLC("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's rented portable storage building described as a Lofted Barn, Inventory No. WLB-D1074-1012-040518-T (the "Property").

Movant argues cause for relief from stay exists because the lease agreement expired on June 10, 2021; the debtor has retained the Property without making payments; the debtor does not have equity in the Property; and because the debtor does not intend to assume the lease.

The particular legal basis for relief from stay under 11 U.S.C. § 362 is not specified.

**DEBTOR'S OPPOSITION**

The debtor filed an Opposition on September 13, 2021. Dkt. 81. The debtor argues that the contract between the debtor and the Movant is "lease-to-own" agreement that should be considered a purchase-money security interest, and not a lease agreement.

The debtor argues further that the Movant's secured claim is provided for in the plan.

**MOVANT'S REPLY**

Movant filed a Reply on September 21, 2021. Dkt. 89. Movant argues that (1) by the agreement's own terms, the agreement is a lease and not a security agreement; (2) that the agreement is a lease under the meaning of C.C.P. § 1812.622(d).

**SUMMARY OF AGREEMENT**

The Rental Purchase Agreement and Disclosure Statement executed by the debtor and Movant was filed as Exhibit 1. Dkt. 76.

The agreement provides that the debtor make 36 monthly payments of \$172.45, totaling \$6,208.20. The agreement also offers options to buy the

Property.

The first early purchase option is within 3 months of execution of the agreement. In that event the purchase price is \$3,725.00 for the Property plus past due fees, less all of the \$172.45 periodic payments made by the debtor.

The second early purchase option is after 3 months of execution of the agreement. In that event the purchase price is \$3,725.00 for the Property plus tax and past due fees, multiplied by the amount of payments remaining divided by 36 (the total number of payments).

The default purchase option, which appears automatic, is that the debtor make all 36 monthly payments of \$172.45, totaling \$6,208.20.

Under the early purchase options, the debtor is paying less than the \$3,725.00 purchase price for the Property because the payments made reduce said price.

The Agreement provides that if all payments are made, the "cost of rental" is \$2,483.20 (the total payments of \$6,208.00 less the cash price of \$3,725.00 for the Property).

The Agreement gives notice that the debtor will not own the Property until all payments are made or one of the early purchase options are exercised. The Agreement gives the Movant a right to repossession upon default in payments.

In sum, the agreement contains what California Civil Code § 1812.623 indicates every rental-purchase agreement shall contain.

## **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 for Relief from the Automatic Stay filed by Rocky Top Rentals, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is **xxxxxxxx**

**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 48 days' notice was provided. Dkt. 52.

**The Motion to Confirm is XXXXX**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on June 29, 2021.

**TRUSTEE'S OPPOSITION**

The trustee filed an Opposition (Dkt. 61) on July 19, 2021, opposing confirmation on the following grounds:

1. The plan treats the claim of Rocky Top Rentals, LLC, as a Class 2. However, that creditor's POC, no. 7, indicates the claim is unsecured.
2. The debtor's plan is a sixty-month plan and the average monthly dividend proposed for the Class 2 claim of Ford Motor Credit Company will take 60 months to pay said claim. As disbursements are not set to commence until month 4, debtor's plan is not feasible.

**DEBTOR'S REPLY**

The debtor filed a Reply agreeing with the trustee's arguments. The debtor represents that Rocky Top Rentals, LLC, is being contacted to see if the creditor will amended its claim. If that creditor does not do so, the debtor acknowledges that the dividend to unsecured will be increased.

The debtor further recommends the order confirming plan address the start date to payments on Ford Motor Credit Company's claim.

**DEBTOR'S SUPPLEMENTAL REPLY**

The debtor filed a Supplemental Reply on September 7, 2021. Dkt. 79. The Supplemental Reply reiterates the debtor's past argument that the claim filed by Rocky Top Rentals, LLC, is inaccurate. But, no Objection to Claim has been filed.

**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 Confirm filed by the debtor, Ron Lee Colla, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is **xxxxxxxxxx**



5. [21-20838](#)-C-13 RON COLLA CONTINUED OBJECTION TO CLAIM OF  
[PGM](#)-4 Peter Macaluso ROCKY TOP RENTALS, LLC, CLAIM  
NUMBER 7  
9-15-21 [[84](#)]

**No Tentative Ruling:**

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 44 days' notice. The Proof of Service shows that 55 days' notice was provided. Dkt. 87.

**The Objection to Proof of Claim is XXXXXXXXX**

The debtor Ronald L. Colla filed this Objection arguing that Proof of Claim, No. 7, filed by Rocky Top Rentals, LLC (the "Creditor"), incorrectly classifies the Creditor's claim as unsecured. The debtor argues the claim is secured because, while the underlying contract identifies itself as a lease, the actual terms render it to be a security agreement.

The objection identifies the following contract provisions as indicative of a security agreement:

1. "You will not own it until you make all the regularly scheduled payments or you use the early purchase option."
2. "Any time after 3 months from the date of execution of this rental purchase agreement, consumer may purchase the rented property."

**CREDITOR'S OPPOSITION**

The Creditor filed an Opposition arguing that the debtor misstates applicable law, and that the agreement underlying its claim is a lease because (1) by the agreement's own terms, the agreement is a lease and not a security agreement; and (2) that the agreement is a lease under the meaning of C.C.P. § 1812.622(d).

Creditor also notes that at no time has the debtor claimed the property being leased, a shed, as an asset on the debtor's Schedules.

**DEBTOR'S SUPPLEMENTAL REPLY**

The debtor filed a Supplemental Reply arguing (1) the contract is not a lease because the debtor paid more to rent the shed than what it is worth; (2) that C.C.P. § 1812.622 does not apply because the contract term is 36 months; (3) that C.C.P. § 1203 applies; and (4) that the contract provisions demonstrate a clear intent to enter a security agreement.

**DISCUSSION**

At the hearing, XXXXXXXXXXXXXXXX

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

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

The Objection to Claim filed in this case by 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 Objection 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 over 35 days' notice was provided. Dkt. 43.

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

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 42) filed on November 2, 2021.

The trustee filed an Opposition (Dkt. 44) on January 4, 2022, opposing confirmation on the following grounds:

1. The debtors are \$912.00 delinquent under the modified plan terms.
2. The modified plan provides for the Internal Revenue Service's secured claim in the amount of \$13,505.77, to be paid a monthly dividend of \$283.00, at 3% interest. This claim was not in the first Confirmed Plan - the trustee requests clarification whether the 3% interest commences at the first confirmation date or confirmation of the modified plan.

**DISCUSSION**

The debtors are delinquent in plan payments, which is evidence that the plan proposed is not 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, 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 filed by the debtors, Leroy Jack Lambert and Theresa Ann Lambert, 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.

**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. 81.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 80) filed on December 13, 2021.

Creditor Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as trustee of CSMC 2019-SPL1 Trust ("Creditor") filed an Opposition (Dkt. 85) on January 6, 2022, opposing confirmation on the basis that the plan does not provide for its \$2,079.61 prepetition arrearage.

**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).

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, 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)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 80.

**The Motion to Incur Debt is ~~xxxxxx~~.**

The debtors filed this Motion seeking authority to incur debt to purchase a new 2021 Hyundai Sonata, or a similar new vehicle, since their 2015 Hyundai Sonata was in a total loss collision.

The proposed financing is in the principal amount of \$23,298.75, paid at 14.9 percent interest over a 72 month term. Monthly payments are proposed to be \$495.04.

The debtors argue in their Motion that a new model vehicle is sought to avoid maintenance and repair expenses, and to cut mileage costs. The debtors represent they will be able to afford the new payment, which is slightly more than double the debtors' car payment under the Modified Plan (Dkt. 42), because the debtors' income has increased and expenses have decreased.

**DISCUSSION**

During the December 14, 2021, hearing the debtors' counsel requested a continuance to see if the interest rate on the prospective new debt could be brought down to 10 percent or less.

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 Incur Debt filed by Clyde Dewayne Wilson and Susan Ann Wilson 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 ~~xxxxxxxxxxxx~~

**Final Ruling:** No appearance at the January 25, 2022 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 34 days' notice was provided. Dkt. 58.

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

**The Motion is granted.**

Wells Fargo Bank, N.A. ("Movant"), filed this Motion seeking authority to enter a loan modification in the form of a Payment Deferral Agreement. The subject debt is secured by the debtor's residence located at 544 36Th Street, Sacramento, California.

The Payment Deferral Agreement provides for deferral of 16 payments and other unpaid amounts to bring the loan current.

The debtor filed a declaration in support of the Motion on January 3, 2022. Dkt. 59.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Wells Fargo Bank, N.A. ("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 Movant's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee and the debtor's counsel for approval as to form, and if so approved submit the proposed order to the court.

10. [19-22599](#)-C-13 STEVEN RUIZ  
[GEL](#)-2 Gabriel Liberman

MOTION FOR PERMISSION TO APPLY  
FOR CALIFORNIA MORTGAGE RELIEF  
ASSISTANCE  
1-10-22 [[32](#)]

**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. Dkt. 35.

**The Motion is granted.**

The debtor filed this Motion seeking authority to apply for mortgage relief assistance with the State of California.

The Motion represents that any individual in a bankruptcy case must provide a letter from the trustee authorizing the application for relief assistance. Because the Chapter 13 trustee in this case has indicated this is not a duty for the trustee, the debtor is seeking an order from the court.

**DISCUSSION**

If the debtor is eligible for COVID-related government assistance, it is in the best interest of the estate that the debtor be permitted to apply for that assistance. No party opposing the Motion, and good cause appearing, the Motion is granted.

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

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

The Motion for Permission to Apply for California Mortgage Relief Assistance filed by Steven Greg Ruiz 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 Steven Greg Ruiz is hereby authorized to apply for mortgage relief assistance with the State of California.