

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

January 26, 2021 at 1:30 p.m.

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

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

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. Dckt. 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.

The parties requested a continuance at the January 12, 2021, hearing to further assess plan feasibility. Dckt. 100.

Thereafter, the trustee filed another Opposition (Dckt. 101) arguing that an additional payment of \$5,948.75 is still required by January 31, 2021 for the proposed plan to be feasible, even with the \$100 increase beginning February 2021.

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.

January 26, 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 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,

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

2. [21-20007](#)-C-13 STEVEN SAXON
[JBC](#)-1 Pro Se

MOTION TO DETERMINE THAT THE
AUTOMATIC STAY DOES NOT APPLY
AND/OR MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-11-21 [[11](#)]

Final Ruling: No appearance at the January 26, 2021 hearing is required.

The Motion for Relief from the Automatic Stay is denied without prejudice as moot.

Creditor Alex Voong filed this Motion seeking confirmation that the stay did not take effect as to the debtor's property lease that expired prepetition, or in the alternative that cause for relief from stay exists.

Thereafter on January 22, 2021, the case was dismissed. To the extent any stay existed, it was terminated by operation of law upon dismissal. 11 U.S.C. §§ 349(b) (3); 362(c).

Therefore, the Motion is denied without prejudice as moot.

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

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

The Motion for Relief from the Automatic Stay filed by Alex Voong ("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 without prejudice as moot, this bankruptcy case having been dismissed on January 22, 2021 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the debtor pursuant to 11 U.S.C. § 362(c) (2) (B) and the real property commonly known as 6530 Franklin Boulevard, Sacramento, California, pursuant to 11 U.S.C. §§ 362(c) (1) and 349(b) (3) as of the dismissal of this bankruptcy case.

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 43 days' notice was provided. Dckt. 84.

The Motion to Modify Plan is ~~XXXXXXXX~~

The debtor filed this Motion seeking to confirm the Third Modified Chapter 13 Plan (Dckt. 82) filed on December 14, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dckt. 85) on January 4, 2021, opposing confirmation on the following grounds:

1. The plan mathematically requires a payment of \$3,560.74, which is greater than the proposed \$3,170.00 payment for January, 2021 through June, 2021.
2. Section 3.07 of Debtor's plan provides for payments to LoanCare LLC/Lakeview for post-petition arrears in the amount of \$18,497.42, however, Trustee records indicate that the post-petition total is \$16,178.38.

DEBTOR'S REPLY

The debtor filed a Reply agreeing with the trustee's arguments, and requesting the following language be added to the order confirming the plan to address opposition:

Plan payments are as follows: \$51,620.00 paid through December 2020. All payments through December 2020 are suspended. Plan payments of \$3,570.00 will begin January 25, 2021 for 6 months. Plan payments will increase to \$4,270.00 beginning July 25, 2021 for 53 months.

Post-petition arrears owed to LoanCare LLC/Lakeview shall be provided for as a Class 1 claim in the amount of \$16,178.38 for the months of July 2019, September 2019, December 2019, January 2020, October 2020, November 2020, and December 2020.

DISCUSSION

At the hearing, **xxxxxxxxxxxxxxxx**

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

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

The Motion to Modify Plan filed by the debtor, Richard Grimes, 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**

4. [19-27016](#)-C-13 KATHLEEN MARSLEK
[SDH](#)-8 Scott Hughes

MOTION FOR COMPENSATION FOR
SCOTT D. HUGHES, DEBTORS
ATTORNEY(S)
12-21-20 [[75](#)]

Final Ruling: No appearance at the January 26, 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. 79.

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.
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Scott D. Hughes, the Attorney ("Applicant") for Kathleen Marslek, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 6, 2020 through December 21, 2020. Applicant requests fees in the amount of \$7,800.00 and costs in the amount of \$63.00.

APPLICABLE LAW

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant describes performing the following tasks:

Reviewed and resolved trustee's objection to the first plan;

Prepared, filed and served a First Modified Plan and a motion to confirm it;

Prepared, filed and served a Motion to Approve the Summit Law Group settlement agreement;

Prepared amended schedules to include both a lawsuit and a settlement that were not included in the original schedules;

Prepared filed and served a Second Modified Plan along with a motion to confirm it;

Prepared and filed an Ex Parte Stipulation to Modify Second Modified Plan with the trustee;

Prepared orders approving the second modified plan and the ex parte modification;

Appeared in court on the motion to modify the plan a second time and the motion to approve the settlement;

Prepared a motion to have the confidential Summit Law Group settlement agreement filed under seal;

Phone calls, texts and e-mails with the debtor and debtor's special counsel in Florida, Ariane Ice, regarding her fees, the debtor's settlement and payment of the proceeds to the debtor and the trustee.

Prepared an Ex Parte Application and Order to Employ Special Counsel;

Prepared Motion for Additional Fees for Special Counsel and this Motion for Additional Attorney's Fees.

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
Scott Hughes	20.8	\$375.00	\$7,800.00
Total Fees for Period of Application			\$7,800.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$63.00 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including prosecution of modified plans and oversight of non-bankruptcy litigation, 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 \$7,800.00 and costs in the amount of \$63.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 Scott D. Hughes("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 Scott D. Hughes is allowed the following fees and expenses as a professional of the Estate:

Scott D. Hughes, Professional Employed by Kathleen Marslek ("Debtor")

Fees in the amount of \$7,800.00
Expenses in the amount of \$63.00,

as an allowance of fees and expenses approved pursuant to 11 U.S.C. § 331, and subject to final review 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.

5. [14-29018](#)-C-13 MARILYN PAVENTY
[EBF](#)-2 Eamonn Foster

MOTION FOR CONTEMPT AND/OR
MOTION FOR DAMAGES, AND AN
INJUNCTION AGAINST USDA RURAL
HOUSING SERVICE
12-24-20 [[107](#)]

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. Dckt. 113.

The Motion for Contempt is ~~XXXXXXXX~~

The debtor Marilyn Theresa Paventy ("Debtor") filed this Motion seeking (1) a determination that creditor USDA Rural Housing Service ("USDA") is in contempt for violation of this court's order confirming Chapter 13 plan and for violation of the discharge stay; (2) damages of greater than \$110,000.00; and (3) an injunction preventing further violation.

Debtor argues the court on June 2, 2015, disallowed \$22,659.00 of the USDA's claim, leaving \$32,882.36 to be paid through the Chapter 13 plan. Dkts. 42, 44; Proof of Claim, No. 6-1. The confirmed Chapter 13 Plan and First Modified Plan provided for that claim. Dkts. 5, 31, 61, 88.

The First Modified Plan was completed, and discharge was entered April 20, 2020. Dckt. 100.

Debtor asserts that despite USDA's secured claim being paid in full and the remainder being discharged, that USDA continued collection efforts. Those collection efforts are detailed through Debtor's testimony and numerous written correspondence Debtor has filed as exhibits. Dkts. 109, 110.

The exhibits (Dckt. 110) show that USDA seeks to collect the following charges:

\$11,253.35	principal
\$1,222.06	interest
\$1,533.04	fees
\$205.70	late charge
\$0	escrow
\$22,659.00	subsidy

The Final Report and Account filed by the Chapter 13 trustee attests that USDA was paid \$28,137.78 in principal, \$4,744.58 towards arrearages, and \$4,340.81 in interest. Dckt. 92.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020; Barrientos v. Wells

Fargo Bank, N.A., 633 F.3d 1186, 1189 (9th Cir. 2011).

A bankruptcy judge has the authority to issue a civil contempt order. Caldwell v. Unified Capital Corp. (In re Rainbow Magazine), 77 F.3d 278, 283-85 (9th Cir. 1996). The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395 (1990); Miller v. Cardinale (In re DeVille), 631 F.3d 539, 548-49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. Peugeot v. U.S. Trustee (In re Crayton), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); see In re Lehtinen, 564 F.3d at 1058.

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. Bennett, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. Bassett v. Am. Gen. Fin., Inc. (In re Bassett), 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

USDA did not file written opposition to the Motion.

At the hearing, xxxxxxxxxxxxxx

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 Contempt filed by the debtor Marilyn Theresa Paventy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that xxxxxxxxxx

Final Ruling: No appearance at the January 26, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. Amended Notice was provided December 22, 2020, giving 35 days' notice. Dckt. 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 to Confirm is granted.

The debtor filed this Motion seeking to confirm the Second Amended Chapter 13 Plan (Dckt. 36) filed on October 5, 2020.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan filed on October 5, 2020 (Dckt. 36) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

7. [20-25121](#)-C-13 DELORES GREY
[VA-1](#) Richard Jare

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
REGIONAL ACCEPTANCE CORPORATION
12-28-20 [[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 14 days' notice was provided. Dkt. 33.

The Objection to Confirmation of Plan is ~~XXXXXX~~

Creditor Regional Acceptance Corporation ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that (1) there is a co-debtor who primarily uses the vehicle secured by Creditor's claim, making it inequitable for the lien to be avoided; and (2) the debtor has not provided proof of insurance of the vehicle.

DISCUSSION

Creditor argues that the plan treatment is inequitable without explaining why. The plan provides for Creditor's claim to be paid \$3,625.00, the amount the court determined, and Creditor did not contest, was the value of Creditor's secured claim. Dkt. 28. If the debtor completes the plan then the Creditor will have received the full amount it would have recovered through repossession of and sale of the vehicle.

Furthermore, the non-filing co-debtor remains liable for the unsecured portions of the debt, which is on top of the Creditor already receiving the value it would receive if the vehicle were repossessed and sold.

Creditor also argues that evidence of insurance has not been provided.

At the hearing, the debtor addressed whether the vehicle is insured
~~XXXXXXXXXXXXXX~~

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 Objection is ~~XXXXXXXXXXXXXX~~

8. [20-24923](#)-C-13 AREN JACKSON
[RMP](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY REAL TIME RESOLUTIONS,
INC.
12-29-20 [[39](#)]

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 27 days' notice was provided. Dckt. 45.

The Objection to Confirmation of Plan is sustained.

Creditor Real Time Resolutions, Inc. as agent for Wilmington Trust, N.A. Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee for the Greenpoint Mortgage Funding Trust 2007-HE-1 ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan is not feasible because (1) debtor's income is unreliable due to being commission-based; (2) there is no declaration supporting proposed contributions from non-debtors; and (3) the plan mathematically requires a payment of \$3,184.61, which is greater than the proposed \$2,545 payment.
2. The plan proposes avoiding Creditor's Second Deed of Trust despite the lien being partially secured.
3. The plan relies on a loan modification which is too speculative.
4. Because Creditor's claim is secured, the plan must (but does not) provide for the cure of Creditor's arrearages and post-petition payments.

DISCUSSION

The plan's feasibility relies on the debtor valuing three secured claims at \$0. Dckt. 24. A review of the docket shows the debtor has not filed motions for that purpose, meaning the plan is not feasible. That is reason to deny confirmation.

Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by Real Time Resolutions, Inc. as agent for Wilmington Trust, N.A. Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee for the Greenpoint Mortgage Funding Trust 2007-HE-1,

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

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the January 26, 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 40 days' notice was provided. Dckt. 116.

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

The Motion to Modify Plan is granted.
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The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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

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

The Motion to Modify Plan filed by the debtor, Kevonna Janae Brown, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan filed on December 17, 2020 (Dckt. 115) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

10. [20-25044](#)-C-13 ANTHONY/BARBARA HANDS
[KMM](#)-1 Julius Cherry

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-18-20 [[16](#)]

TOYOTA MOTOR CREDIT
CORPORATION VS.

Thru #11

Final Ruling: No appearance at the January 26, 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 39 days' notice was provided. Dckt. 21.

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.

Toyota Motor Credit Corporation ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' 2018 Toyota RAV4 (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent in plan payments, the debtor has not provided proof of insurance for the Property, and because the plan indicates the Property will 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 in plan payments, the debtor has not provided proof of insurance for the Property, and because the plan indicates the Property will be surrendered.

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 Toyota Motor Credit 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 2018 Toyota RAV4 ("Property"), and applicable nonbankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

No other or additional relief is granted.

11. [20-25044](#)-C-13 ANTHONY/BARBARA HANDS
[MMJ](#)-1 Julius Cherry

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-22-20 [[22](#)]

BMW BANK OF NORTH AMERICA
VS.

Final Ruling: No appearance at the January 26, 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 35 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 for Relief from the Automatic Stay is granted.
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BMW Bank of North America ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2014 BMW 5 Series 535i Sedan 4D (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent in plan payments and because the plan indicates the Property will be surrendered. Declaration, Dckt. 24. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$27,774.82, exceeds the value of the Property, which is \$14,312.00. *Id.*

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 debtor is delinquent in plan payments and because the plan indicates the Property will be surrendered. The court also finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$27,774.82, exceeds the value of the Property, which is \$14,312.00.

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 that Rule because the Property has no equity and is a rapidly depreciating asset.

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 BMW Bank of North America ("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 2014 BMW 5 Series 535i Sedan 4D ("Property"), and applicable nonbankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

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.

12. [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 #14

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 property commonly known as 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.

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 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 hearing, the parties reported ~~xxxxxxxxxxxxxx~~

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 XXXXX

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

Final Ruling: No appearance at the January 26, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice.

The Motion to Confirm is denied as moot.

After filing this Motion To Confirm, the debtor filed a new modified plan and corresponding motion to confirm that plan. Dkts. 71, 73.

Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtors, Jennifer A Kalinen and David Wayne Kalinen, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

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. 76.

The Motion to Confirm is XXXXXXXXX

The debtors filed this Motion seeking to confirm the Third Amended Chapter 13 Plan (Dckt. 73) filed on December 2, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dckt. 77) on January 4, 2021, opposing confirmation on the following grounds:

1. The plan does not provide for a plan payment in August 2020, and does not explain why no payment is made.
2. The debtors are paid ahead \$949.00. The trustee does not oppose confirmation if the order confirming plan specifies the correct amount paid to date.

DEBTOR'S DECLARATION IN REPLY

The debtor filed her Declaration in reply (Dckt. 80) arguing that she overpaid due to a temporary reduction in expenses, and recommending the \$949.00 be treated as a reserve in the event of reduced income.

DISCUSSION

The debtor did not address why there is no payment in August 2020.

Further, while the debtor suggests keeping her overpayment as a buffer, no legal argument is provided by debtor's counsel for not providing all disposable income into the plan here where less than 100% of unsecured claims are being paid.

At the hearing, debtor's counsel addressed the trustee's opposition
XXXXXXXXXXXXXXXXXXXX

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, Jennifer A Kalinen and David Wayne Kalinen, 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 **xxxxxxx**

Final Ruling: No appearance at the January 26, 2021 hearing is required.

The Motion is dismissed without prejudice.

On January 21, 2021, the Movant filed an Ex Parte Motion to Dismiss. Dckt. 70. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

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

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

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

The motion filed by Esther Vasquez having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.